

**FILE COPY**

**APPENDIX**

Supreme Court, U. S.  
**FILED**

**FEB 23 1973**

**MICHAEL R. DAK, JR., CLERK**

**In the Supreme Court of the United States**

OCTOBER TERM, 1972

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**No. 72-656**

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**ORVAL C. LOGUE, ET AL.,**

*Petitioner,*

**VS.**

**UNITED STATES OF AMERICA,**

*Respondent.*

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE FIFTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED OCTOBER 28, 1972  
CERTIORARI GRANTED JANUARY 8, 1973**

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**E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030**

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### CAPTION

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS  
HOLDING SESSIONS AT CORPUS CHRISTI

ORVAL C. LOGUE, IND. AND AS PERSONAL  
REPRESENTATIVE OF HIS DECEASED SON,  
REAGAN EDWARD LOGUE, ETC.

**versus**

UNITED STATES OF AMERICA

NO. 69-C-106

BE IT REMEMBERED, that in the above entitled and numbered cause, lately pending in said Court, in which Final Judgment was entered on the 8th day of March, A.D. 1971, the Honorable Owen D. Cox, Judge of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:

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CLOSED 3/8/71  
Appeal filed 5/6/71

62-C-106

**Jury demand date:**

D. C. Page No. 100 Rev

TITLE OF CASE

ATTORNEYS

ORVAL C. LOGUE, Ind. & as  
Personal Representative of his  
Deceased Son, REAGAN EDWARD LOGUE,  
etc.

vs.

UNITED STATES OF AMERICA

For plaintiff: Wm. R. Edwards  
Edwards, DeAnda & Arnett  
P. O. Drawer 480  
Corpus Christi, Texas 78403  
  
Marvin Foster  
714 Buffalo  
Corpus Christi, Texas 78401

For defendant: ANTHONY J. PARRIS  
GEORGE PAIN, Asst.  
U. S. Attorney

STATISTICAL RECORD

CODS

DATE

NAME OR  
RECEIPT NO

REC.

DIB

J.S. 5 mailed

Clerk

7/1/69

E.D. & A.  
P/P

15.00

15.00

J.S. 6 mailed 3/8/71

Marshal

7/18/69: C/D#3-1

Base of Action: TEXAS  
Wrongful Death Act -  
\$100,000

Docket fee

Witness fees

Action arose at:

Depositions

TRUE COPY I CERTIFY

ATTORNEY:

V. E. LEE THOMAS, JR.

By *[Signature]*

Deputy Clerk

69-C-106 - LOG. VS U.S.A.

DATE	PROCEEDINGS	Page Order Judgment No.
7/1/69	Original complaint, filed.	2 1-
7/30/69	Summons issued & delivered to marshal. Summons returned and filed. (Executed 7/23/69 thru U.S. Atty., Houston, Texas; further on 7/22/69 by mailing two copies to U. S. Attorney General, Washington, D.C.)	2 1-
9/29/69	DEFENDANT'S ANSWER, filed.	2-
10/8/69	Govt's motion for leave to amend, filed. (M/D 10/20/69)	3 4
10/27/69	ORDER granting Leave to Amend. (WS)	3-
1/5/70	Plaintiff's First Amended Answer, filed.	5-
1/5/70	PRETRIAL CONFERENCE HELD: (WS)	7-
1/5/70	Discovery Order issued.	8-
3/10/70	Notice of Deposition of Dr. Shannon Gwin, filed.	9-
3/16/70	Notice of Deposition of June Shilling, filed.	10-
4/30/70	Oral Deposition of Dr. Shannon Gwin, filed.	11-
10/19/70	Deposition of Dr. James H. White, filed.	12-
10/29/70	Def't's notice of deposition of Dell W. Bowers, Jr., filed.	13-
1/14/71	Defendant's Motion for continuance, filed.	14
1/14/71	Interrogatories to be propounded to Chief Deputy U. S. Marshal T. C. Slocomb, filed.	15
1/25/71	Written deposition of Thomas C. Slocomb, Chief Deputy U.S. Marshal, filed.	16
" "	Deposition of Del W. Bowers, Jr., filed.	17
" "	Def't's motion for leave to amend, filed.	18
" "	Def't's SECOND AMENDED ANSWER, filed. ("Leave to file granted. ODC")	19
" "	Plff's proposed findings of fact & conclusions of law, filed.	20
" "	Def't's proposed findings of fact and conclusions of law, filed.	21
1/26/71	Motion of Jere A. Daniel, Jr., to quash civil subpoena to produce document or object, filed.	22
" "	Pre-Trial Order, filed. (Approved ODC)	23
1/26/71	Order in re first day's trial, entered. (ODC)	
	Trial begun before the Court. Mr. DeHada & Mr. Foster announce that Marvin Foster withdraws as co-atty. for plf., as he is material witness in case. Withdrawal approved by Court. Motion to Quash Subpoena as to Jere Daniel to be carried along with case. Seven witnesses sworn; Plf invokes the Rule. Plf's witnesses. Portions of depositions of Chief Deputy U.S. Marshal Slocomb, Dr. James H. White & Dr. Shannon Gwin read into record. Trial not concluded; case recessed to 1/27/71.	
1/27/71	Order in re second day's trial, entered. (ODC)	
	Trial resumed before the Court. Plf's witnesses. Portions of daily log of Deputy U.S. Marshal Bowers dated 5/24/68 read into record. Plf rests. Def't moves for judgment of dismissal. Motion to be carried along with case. Def't's witnesses. Trial not concluded; case recessed to 1/28/71.	
1/28/71	Order in re third day's trial, entered. (ODC)	
	Trial resumed before the Court. Def't's witnesses; def't rests. Trial not concluded; case recessed to 1/29/71.	
1/29/71	Order in re fourth day's trial, entered. (ODC)	
	Trial resumed before the Court. Both sides close. Arguments of counsel. Trial concluded.	
2/17/71	MEMORANDUM AND OPINION, filed and entered. (ODC) Pltff recovers \$5,000.00 for the parents plus funeral expenses in amt. of \$1,164.50.	24

C.A.60-C-10 LOGUE VS. U.S.A.

DATE	PROCEEDINGS	Date / Judge
2/22/71	SUPPLEMENTAL ORDER, filed and entered. (ODC) Ordered that Attorney James De Anda be awarded a fee in the amount of \$1,750.00 as Attorneys fees to be paid out of but not in addition of Judgment heretofore rendered herein.	232
3/8/71	JUDGMENT filed and entered. (ODC) (Plf Orval C. Logue, individually, recovers \$1,500, of which \$375 is awarded as atty's fees; Plf Orval Logue, as pers. rep. of Est. of Reagan E. Logue, Dec'd., recovers \$1,164.50, of which \$275 is awarded as atty's fees; Plf Alice Marie Blouin recovers \$3,000, of which \$875 is awarded as atty's fees; costs taxed against deft.)	2421
5/6/71 5/8/71 6/9/71	Defts. NOTICE OF APPEAL, FILED. (Record due 6/15/71) Court Rep. & Transcript of Proceedings, Jan. 20, 21, 28, 29, 1971, filed Deft.'s motion for extension of time for transmission of record on appeal, filed. (Counsel f/plfs advises he has no objection.)	252 2621
6/9/71	Order extending time for transmission of record until August 4, 1971, filed and entered. (ODC) (Certified copy mailed to Clerk, U.S. Court of Appeals & counsel. crw)	272

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ATTEST

V. BALBY THOMAS, Clerk

By: *[Signature]*

Deputy Clerk

[1] REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Caption Omitted)

APPEARANCES:

Honorable OWEN D. COX, Judge of the District Court of the United States for the Southern District of Texas, Corpus Christi Division,

PRESIDING

Messrs. EDWARDS & De ANDA, Wilson Building, Corpus Christi, Texas,

By Mr. JAMES De ANDA,  
Mr. PHIL MAXWELL,

COUNSEL FOR PLAINTIFFS

Mr. GEORGE PAIN, Assistant United States Attorney, Houston, Texas,

and

Mr. WILLIAM L. BOWERS, JR., Assistant United States Attorney, Chief-Civil Division, Houston, Texas,

COUNSEL FOR DEFENDANT

[2] BE IT REMEMBERED that on the 26th day of January, A. D. 1971, there came on to be heard before the Honorable Owen D. Cox, Judge of the District Court of the United States for the Southern District of Texas, Corpus Christ Division, presiding in the District Court of the United States for the Southern District of Texas, Corpus Christi Division, without the intervention of a Jury, the above numbered and entitled cause;



WHEREUPON, the following evidence, together with objections, replies, remarks, rulings, comments, and exceptions in connection therewith, was presented before said Court, to-wit:

---

The Court: I will call the case of Orval C. Logue, et al, against United States of America, No. 69-C-106. What says the Plaintiff?

Mr. De Anda: Your Honor, the Plaintiff is ready.

The Court: What says the Defendant?

Mr. Pain: The Defendant, United States of America, is ready, Your Honor.

The Court: Gentlemen, do you have most [3] of your witnesses here? Would you like—we might as well swear them at this time.

Mr. De Anda: Judge, I have one witness that I did not talk to until yesterday, and I haven't had a chance to explain it to the Government. It is a gentleman that was in jail at the time that Mr. Logue was up there, and he will testify concerning the circumstances on the 25th, as to the number of inspections and this sort of thing. But I didn't talk to him until yesterday. In fact, he was on his way to Arizona when we found him, and I did not anticipate using him, although we knew about him, I didn't know I was going to use him, so I thought I would tell Mr. Pain here. If that is all right, if you want to talk to him

before I put him on, you are welcome to, but I had planned to start off with him, however—

Mr. Pain: —Yes, I would like to talk to him before—

The Court: —I think you are entitled to.

Mr. Pain: — before he puts him on as a witness. May we have about five minutes, [4] Your Honor, out in the passageway?

The Court: All right.

Mr. De Anda: That will be fine.

Mr. Pain: Which witness is it?

(Discussion held off of the record.)

The Court: Mr. De Anda?

Mr. De Anda: Yes, sir.

The Court: I wonder—this is just a matter of mechanics rather than anything else—this is off the record.

(Disussion held off of the record.)

Mr. De Anda: Judge, if I might interrupt the Court a moment—Mr. Marvin Foster was originally co-counsel in this case, and in checking the canons, it appears that perhaps, because he is a witness, rather a material witness in the lawsuit, that it would be

better for him to withdraw as a lawyer in the case, and also any interest that he might have in the case, and we have done that, and he does not appear on the Pre-Trial Order as Counsel. I know he appeared on the [5] original pleading.

The Court: Yes, yes, sir, all right.

Mr. Bowers: Your Honor, sir, thank you, we are ready.

Mr. Pain: Your Honor, we are ready to proceed.

The Court: I have read the Pre-Trial over carefully, and I think I understand the intentions of both parties, but if you would like to make an opening statement, you are free to do so. Mr. De Anda—

Mr. De Anda: — Your Honor, just to briefly supplement the Order because I don't think that maybe it is clearly delineated in the Order as it should be, and insofar as the Sheriff's Department is concerned, and the Sheriff's Deputies, at least those connected with the operations of the jail and detention of Mr. Logue, deceased, that it is our position that the, that the government has a non-delegable duty to safely keep its prisoners. And under the Statutes that we have mentioned in the Pre-Trial Order, both as pertains to the Bureau of Prisons, and as [6] pertains to the United States Marshal, and that, in acting as jailers, insofar as Reagan Logue was concerned, that the Government answers to the conduct of these men if there is a breach of their duty of reasonable care in the, in the keeping and safekeeping of their prison-

ers, just as if they were a United States Marshal. I think that other than that, Judge, I believe that the Pre-Trial Order fairly well covers the case from both sides.

I understand that Counsel indicated that they might want to make an addition to the supplement to it, and if they have, I would like to know about it.

Other than that, Judge, that's all I have unless there is any matter in the Court's mind that you would like for me to elaborate on.

The Court: Not at this time. Would you like to make a statement now, Mr. Pain?

Mr. Pain: Your Honor, at the present time we will let the Pre-Trial Order speak for our position until we get the opportunity to put on our evidence, our [7] case in chief, and then at that time I may want to make an opening statement, if it please the Court.

The Court: All right, have you filed anything new that Mr. De Anda is not aware of?

Mr. Pain: No, sir.

The Court: All right, at this point I would like to mention one thing—there has been filed this morning on behalf of Jerry Daniels a Motion to Quash the Subpoena, which has been served on him, to produce certain documents. I am not going to rule on that at this time, but when the, when you call him, we will, we will decide the question of whether or not he is required to furnish the information you have requested.

Mr. Pain: Your Honor, it is my anticipation that in all likelihood that will never come to issue.

The Court: All right, sir. Well, do you have—let's swear all the witnesses at this time.

Mr. Pain: Your Honor, if I may—most [8] of my witnesses, I have not brought them down here this morning anticipating that he is going to take a day or so, and I told my witnesses to be on call.

The Court: That's all right. Let's swear the witnesses that are here.

Mr. De Anda: Marvin, Mrs. Logue, stand up.

The Clerk: Will you all raise your right hands, please?

(Oath administered to the witnesses by the Court Clerk.)

The Court: We'd better have the names of those witnesses so they won't get mixed up on who has been sworn and who hasn't.

Mr. De Anda: Lorenzo Davis, Jr., (spelling) L-O-R-E-N-Z-O, is that right? Mr. Howard Vaught, Mr. Marvin Foster, Mr. Orval Logue, and Mrs. Marie Alice Blouin, (spelling) B-L-O-U-I-N, the natural mother of, of Reagan Logue, Your Honor, who appears on the pleadings as Marie Alice Logue, she has remarried, Judge.

[9] The Court: All right.

Mr. Pain: Your Honor, one of my witnesses stood up, Mr. Gerald Jones, Deputy United States Marshal.

The Court: All right: Is there anything further?

Mr. De Anda: Henry Miggins, Judge.

Mr. Pain: That's another witness that I mentioned, Mr. Henry Miggins, he's a Probation Officer.

The Court: All right.

The Clerk: There were seven witnesses that were sworn that I counted, so that seems to be all.

The Court: You may proceed.

Mr. De Anda: Your Honor, I would call Lorenzo Davis to the stand, Judge.

The Court: Step up there and take your seat.

Mr. De Anda: Your Honor, I would like to invoke the Rule, Judge, I don't know if there are any more of his witnesses that are here. Of course, Mr. Jones is here, I guess—

(Discussion held off of the record.)

[10] Mr. Pain: Your Honor, I have no objections to the invoking of the Rule except for Mr. Miggins, who is a Probation Officer, and I would like to have him present at counsel table during one witness' testimony of the Plaintiff, and that would be Mr. Vaught.

The Court: I think you are entitled to someone in that capacity to help you with your case, I would think.

Mr. Pain: And in addition to that, I would like to have Mr. Jones, the Deputy United States Marshal, present during all of these proceedings.

The Court: Well, I, I can't do that, I don't believe I can. I can let you have one witness who, in effect, represents the government to sit with you and help you with the trial of the case.

Mr. Pain: All right, then, may I substitute Mr. Miggins for Mr. Jones during the testimony of that one witness?

The Clerk: We didn't swear Mr. Miggins, we didn't give Mr. Miggins the oath.

Mr. Pain: I don't anticipate calling him [11] to testify.

Mr. De Anda: Oh, you don't anticipate that he's going to testify?

Mr. Pain: He may.

Mr. De Anda: George I don't think there is any matter that might be in conflict except there would be the one time I would want him out of the courtroom.

Mr. Pain: When is that?

Mr. De Anda: When you want him in here.

Mr. Pain: For Howard's testimony?

Mr. De Anda: I don't see why he should be in here during Mr. Vaught's testimony any more than for any other witness.

Mr. Pain: Your Honor, his testimony, I anticipate that Mr. Vaught's testimony will bear on his capacity as a United States Probation Officer, and I am not familiar enough with their internal procedures; I would like to be advised as to their internal procedures by Mr. Miggins when Mr. Vaught does testify, if he does so testify, and that is the purpose that I would like to have Mr. Miggins present at counsel table during that time. [12] And I would substitute him for Mr. Jones, so that I would only have one at any one time, one person to assist me.

The Court: I, I, I don't believe, I don't believe that is within the, within the Rule as I understand it. I, I know you are entitled to have one, one person to assist you in your, in your trial of the case, but to substitute others from time to time for a particular purpose, I just don't believe I can allow that.

Mr. Pain: All right, sir.

The Court: To the witnesses who are here in the courtroom—the Rule has been invoked and this means that you are not to talk to each other, or with any other person, about this case while it is in trial, other than the attorneys, or except by permission of this Court. You are not to read any report or comments upon the testimony in this case while



you are under the Rule, or any person who violates this Rule may be punished for contempt. I will say this to counsel—as the witnesses arrive who have not been [13] sworn, I want you to be sure and advise me, or at least make arrangements to see that they don't get in the courtroom at any time while the testimony is going on because that, that would be, of course, be a violation of the Rule, of the Rule in effect. Mr. Marshall, will you show the witnesses who have been sworn to the witness room?

The Marshal: Follow me, please.

Mr. De Anda: Judge, Mr. and Mrs. Logue are excused from the Rule, Mr. Logue, the Plaintiff, and Mrs. Blouin is a Plaintiff.

The Court: Are they both Plaintiffs?

Mr. De Anda: Yes.

The Court: They are excused from the Rule.

Mr. De Anda: Your Honor, Mrs. Blouin, Marie Alice, Marie Blouin is the natural mother, and she asked me if she might leave if she felt she should, and I told her that I thought it would be all right, if that is all right with the Court, during the testimony.

The Court: You mean during the, during [14] the testimony?

Mr. De Anda: I don't think she will interrupt the witness, Judge, but she is—

The Court: —Well, I don't like to have people in the courtroom walking in and out—

Mr. De Anda: —Yes, sir.

The Court: —It is distracting from the standpoint of the lawyers and the Court and the witnesses, but because of any, well, physical disability or for any reason of that sort—

Mr. De Anda: —She just recently had surgery, Judge.

The Court: And if that is the condition, why she may leave, but I will ask that when you do leave, that you leave in such a way as not to distract us.

Mr. De Anda: May I proceed, Judge?

The Court: Yes, sir.

[15]                      LORENZO DAVIS, JR.,

was called as the first witness on behalf of the Plaintiffs, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

#### DIRECT EXAMINATION

By Mr. De Anda:

Q. Please state your name.

A. Lorenzo Davis, Jr.

Q. Mr. Davis, you are going to have to speak out loud enough for the Court Reporter, for the lawyers, and for the Judge to hear you.

A. Uh-huh.

Q. Okay?

A. Yes, sir.

Q. And try to speak out and not shake your head or anything so that we can hear what you say.

A. Uh-huh.

Q. How old are you, Mr. Davis?

A. Twenty-two.

Q. And where do you live?

A. 4550 Valdez.

Q. Here in Corpus Christi?

[16] A. Here in Corpus.

Q. I am going to direct your attention to the month of May of 1968, you were in the County Jail, in the Nueces County Jail at that time?

A. Yes, sir.

Q. And are the dates, did you know Reagan Edward Logue while he was in jail?

A. I knew him. I didn't know him until they brought him in, you know, inside of the jail, we met then; I was there.

Q. I am referring to the young man that hung himself.

A. Yeah.

Q. This happened while you were in jail?

A. Yes, sir.

Q. All right, now were you present, or did you know when he came to jail before he went to the hospital?

A. Oh, I was in jail when he came in.

Q. All right.

A. And I was there when he went to the hospital.

Q. All right, were you occupying the same cell or tank that he was?

A. We were livin' in the same cell, Logue and I.

Q. All right, how long was he in jail before he [17] went to the hospital, how long had he been in jail there with you before he went to the hospital?

A. Oh, about three or four hours at the most.

Q. All right, do you, while he was in there with you, and when he was put in jail, Mr. Davis, did you have any conversation with him?

A. No, he didn't talk very much.

Q. I beg your pardon?

A. He didn't talk very much.

Q. All right, did anything unusual happen while he was in the, in the cell there with you?

A. Well, when I was in the cell, I asked him to come over in the cell with me and he come over, moved in the cell with me, and I was goin' to sit back out at the table and play poker—

Mr. Pain—Your Honor—

Mr. Bowers: —Your Honor, we can barely hear the witness; it's very difficult to understand him and—

The Court: —I'm having difficulty myself. Talk a little louder so everyone in the courtroom can hear you.

By Mr. De Anda:

Q. Mr. Davis, you have, you have a naturally soft

[18] voice and it is hard to hear it—you say that you asked him to come into the cell there with you?

A. I asked him to come into the cell where I was and he did.

Q. All right, and when they put him in, in this area, or tank, is that what you call them?

A. Yeah.

Q. There, there are several cells within the tank?

A. Yes, sir.

Q. And are the prisoners that are in the jail permitted to walk from one cell to another within the tank?

A. Yes, sir.

Q. So that to bring this thing to a head, when he came in there, he went into a different cell from the one you were in?

A. Yes, sir.

Q. And then you asked him to come on into your cell?

A. Yes, sir.

Q. And did he do that?

A. He did.

Q. All right, while he was in there with you, did anything happen, anything unusual happen to him, [19] or did you, or to anybody, as far as you know?

A. Well, when, when I came, I come back outside to play poker and I was sittin' at the table, and after awhile he come and brought me a note that he wrote and I didn't pay it any attention, I just stuck it in my top pocket and kept on aplayin' poker. Later on he called me and asked me to bring him a drink of water, and I did. Well, I say, "I will get up and carry this guy a cup of water," and I went in there

to see, to carry him the water, and I found out that he had done cut himself. And I looked at him and seen he had cut himself pretty bad, and the mattress that he was sleppin' on, it looked like it was filled up with blood. The first thing I done was, I called the jailer, and by the time he got back there, it took him about ten minutes to get back there, and then he asked what had happened and I told him the man had cut himself, and I got him back to the door and they took him off to the hospital.

Q. You say he was cut pretty bad?

A. Yes, sir.

Q. How do you mean, cut pretty bad?

A. By his wrist, he cut it pretty deep and the [20] blood was layin' on the mattress, you know, it was just like a puddle of water.

Q. I see.

A. And he had passed out.

Q. Now this tank where you and Reagan Logue were confined, is that on, where in the jail is that?

A. It's downstairs, the first floor, you know, up the first floor.

Q. On the main floor of the jail?

A. Yes, sir, the main floor of the jail, yes, sir.

Q. Is that the same floor of the jail where the jailer's office is and—

A. —Yes, sir—

Q. —and the booking, and the booking desk is?

A. Yes, sir.

Q. And the kitchen facilities and visiting booths and this sort of thing?

A. Yes, sir.

Q. All right, and, and after you called the jailer, they came up there and took Logue away?

A. Yes, sir.

Q. All right, after that happened, did you remain in jail?

A. Yes, sir, I did.

[21] Q. Were you ever removed from the jail, or from that cell or tank?

A. I was moved the same day. They discovered I had a note that he had wrote and they moved me the same day, they moved me upstairs, which is the miscellaneous tank, which is right next to isolation where they brought Logue back to, they brought him back and put him in isolation.

Q. All right, but the same day that Logue was removed—

A. —They moved—

Q. —from the jail to wherever they took him—

A. —Uh-huh—

Q. —you were taken upstairs?

A. Yes, sir, I was.

Q. Now that was on the second floor of the jail?

A. Uh-huh.

Q. Which is actually the fifth or the sixth floor of the courthouse, but on the second floor of the jail. How do you get from the first floor of the jail to the second floor of the jail?

A. By stairs.

Q. A stairway?

A. Uh-huh.

Q. Is that stairway located inside the—strike [22] that question, Alice, please, ma'am. Let me see if I can't—Judge, are you familiar with the Nueces County Jail, it might save me a little time.

The Court: Yes.

Mr. De Anda: All right, sir.

The Court: Yes, I am.

By Mr. De Anda:

Q. As you walk in the jail off of the elevator, where the people are coming into the jail, you go through one set of doors?

A. Yes.

Q. Or one door?

A. Yes.

Q. And that puts you into, for want of a better word, I will call it a reception room—

A. —Uh-huh.

Q. That is where you can walk to the booking desk or make inquiries if you want to see somebody in jail?

A. Uh-huh.

Q. All right, and then to get into the area where the, where the people are actually confined, you have to go through another locked door?

A. Yes, sir.

[23] Q. With bars?

A. Yes, sir.

Q. All right, is the stairway inside this second locked door?

A. Yes, they are.

Q. But the stairway is outside the locked area where the tanks are?

A. Yes, sir.



Q. So that you were taken up this stairway to the second floor?

A. Yeah.

Q. Now generally are there any jail personnel other than the prisoners inside the second locked door?

A. No.

Q. That's the one that you go to by going to the stairs?

A. No.

Q. Generally, if there is any jailer in that area, it is because he's got to, he's got business or something?

A. He's got business, yeah.

Q. All right, now after you climbed the stairway to go up to the second floor, you say there are, there is another tank or tanks up there?

[24] A. Uh-huh.

Q. And you were taken up to the second floor?

A. Yeah, that's right.

Q. Is that right?

A. That's right.

Q. Now were there any other prisoners up there other than yourself?

A. Yes, sir, there was some.

Q. Do you know how many without giving me the exact number, approximately how many prisoners there were?

A. About twenty.

Q. About twenty all in one tank?

A. Yes, sir, all in one tank.

Q. And do you remember how many days or days, how many, how much later it was that Reagan Logue was returned to jail, did you see him when he was brought back?

A. Yeah, I saw him when they brought him back. They brought him back the next day.

Q. All right, and where was he placed?

A. In isolation.

Q. Is that on the second floor?

A. That's on the second floor.

Q. Now from, can you describe to me and to the [25] Judge the isolation cell as to where it was from the tank where you were, you were and the other prisoners were confined, could you see inside the isolation cell?

A. I could only see to the, to the door, to where they open the isolation. That's as far as I could see, but I could talk to anybody next door that was in isolation.

Q. You could by talking loud?

A. Yeah, by talking loud, yeah.

Q. All right, but you couldn't see inside of the cell except for one small area?

A. Just one small area. It is from, from the door you could see all the way down from isolation, I mean from the miscellaneous tank to the state tank, where it is, right past isolation, you know, and if you have to go in or come out with anybody, you can see.

Q. And how else does that isolation cell look, other than this little area on the door, or where you have bars, is the rest of it bars, or is it metal, or what?

A. You see, it's metal with holes in it about the size of a fifty cent piece.

Q. And outside those holes is there any kind of [26] covering?

A. Well, it's a little screen, you know.

Q. A screen?

A. Somethin' like chicken wire, somethin' like that.

Q. All right, now as far as you know, was Logue in there by himself?

A. Yes, sir, as far as I know.

Q. Did any of the jailers or the Sheriff or anyone else tell you or any other prisoner there in the tank to keep an eye on Logue, or to talk to him, or anything of that kind?

A. (Shaking head no)

Q. You are shaking your head no?

A. No, they didn't.

Q. All right, while Reagan was, Reagan Logue was in that cell, in this isolation cell, did you have any occasion to talk to him or try to talk to him?

A. Yeah, I talked to him that next morning about 9:00 or somethin'; it was about 9:00, I'd say, we don't have a clock or anything up there where we can keep up with the time, so I'd say it was about 9:00 o'clock. You can usually keep up with it by the sun, you know, and it was about 9:00 o'clock and I talked to him, and he [27] talked kinda funny. So, so I just went on back to sleep.

Q. I'm sorry, I didn't hear you.

A. I say it was about 9:00 somethin' that morning when I tried to talk to him, and we talked for a few minutes, and he sounded kinda groggy, you know, so I let him go ahead, you know, and take his rest, or go back to sleep, or whatever he was goin' to do.

Q. You just talked to him for a short while?

A. Yeah.

Q. And that afternoon or that day, did you have, did you try to talk to him any more?

A. I tried to talk to him again around about, about, real close to feedin' time, which is about, around 11:00 somethin', you know, and he didn't answer.

Q. He did not answer?

A. He didn't answer me.

Q. He didn't answer you. Did you try to talk to him any that afternoon?

A. Well, I tried to but he didn't answer that afternoon. This was after they had brought dinner, I tried to talk to him about 1:00 somethin', and when I tried to talk to him again, [28] and he still didn't answer, so the jailer comes up around, around about 5:00 somethin' when they get ready to feed, 4:45, when they get ready to feed dinner, and they found him, found him laying up there dead. He had hung himself.

Q. During this time that day which, incidentally, you may not recall the date, but I believe it is undisputed that it was May the 25th of 1968, Mr. Davis, do you recall whether—strike that—let me ask you this—in the usual course of events up there on the second floor of the jail, do the jailers make any rounds either day or night?

A. They make rounds at night, that's to punch, they have to carry a clock with them, you know, this kind, (indicating with hands), I guess that's what they punch the time by, and they have to punch that clock. They come around every hour on the hour at night, that's—

Q. —This is at night?

A. That's at night, this is the onliest time, you know.

Q. Did they make those rounds during the day?

A. No.

[29] Q. All right, during the day that Logue was in that isolation cell, do you recall any unusual activity on the part of the jailers, or the jail personnel, or anyone else, in going back there to see Logue or talk to him?

A. No, huh-uh. They might have come up there once, that would be all, because any time the jailers come up, everybody notices it when they come up because everybody wants somethin', usually to use the telephone, cigarettes, or they want somethin', you know, and they just don't come up there, they didn't come up there that day at all. They're not goin' to come up there noways unless they are coming up there for somethin' because they know the prisoners is goin' to beg when they come up there anyway.

Q. I see, as far as you recall, then, there was no unusual traffic going back and forth to—

A. —No—

Q. —Reagan Logue's cell on that day, the 25th?

A. (Shaking head no)

Q. You are shaking your head.

A. No, I say it wasn't.

Q. There was none?

A. There was none.

[30] Q. All right, did you know Reagan Logue before this?

A. No, sir, I didn't.

Q. Had you ever seen him before?

A. No, sir.

Mr. De Anda: We pass the witness, Your Honor.

## CROSS EXAMINATION

By Mr. Bowers:

Q. Mr. Davis, I need to ask you about the time sequence of events. As I understand your testimony, you were in jail at the time Reagan Logue was originally brought into the Nueces County Jail, is that right?

A. That's right.

Q. How long had you been there, sir?

A. Oh, ever since about, I was there, I think it was about May the 6th, I believe.

Q. Can you speak up, sir, I can just barely—

A. —I think about May the 6th.

Q. Since about May the 6th?

A. Uh-huh.

Q. You were awaiting trial at that time?

[31] A. Yes, sir, I was.

Q. All right, sir, were you subsequently convicted on the charges you were held on?

A. Yes, sir, I were.

Q. And what was that conviction for, sir?

A. Car theft.

Q. Car theft, all right, sir, and you went to the penitentiary for that?

A. Yes, I did.

Q. All right, sir, now when Logue came in, did you have any discussions with him about what the charges were against—

A. —No, I didn't.

Q. All right, sir, did he say anything to you at that time that would have indicated to you that he might have contemplated taking his life?

A. No, he didn't.

Q. All right, sir, do you recall what it was that you did talk about?

A. Well, he just asked me—I asked him to move into my cell, and that was it, to move in my cell if he wanted to, and he came over and moved in my cell, and that was it.

Q. Is that all you said to him?

A. That was all.

[32] Q. Okay, now about how much later was it than that, as best you can recall, that you observed this cut on his arm?

A. Well, he brought me this note, like I said, and I was sittin' there playin' poker, and later on he called and asked me to bring him some water, and I brought him the water, that's when I discovered he had cut hisself.

Q. Okay, where was that cut located on his arm?

A. On his wrist.

Q. On his wrist?

A. Uh-huh.

Q. You're positive about that location?

A. That's the onliest place I could see, there was so much blood, he was full of blood.

Q. All right, sir, did you do anything to attempt to stop the blood or anything like that?

A. Uh-huh.

Q. Okay, sir, now do you recall which officer it was that came when you called to report this to?

A. Todd.

Q. Mr. Todd?

A. Mr. Todd, sir.

Q. All right, when Todd came, what happened at [33] this point?

A. Well, I told him that Logue had cut himself, and he said, "Where is he," and I went and brought him, I brought him, I got him down off of the bunk and brought him up to the front there, and he took him on off.

Q. Did Logue say anything at that time?

A. He passed out.

Q. All right, sir, he was, in other words, unconscious at that point?

A. Uh-huh.

Q. All right, now how long after that was it that you were taken up and placed in the tank adjoining this isolation?

A. Later on that evening.

Q. That's later on that same day?

A. Uh-huh.

Q. When did Logue come back?

A. The next day.

Q. All right, how did you happen to see when he came in?

A. Well, you see, they have windows on the miscellaneous where you can see out when the jailer comes up, when the jailer comes to the door, he's facin' you, and they have a window, [34] and you can automatically see everything that comes in and goes out.

Q. All right, sir, I would like for you to be a little bit more specific. May I approach the board, Your Honor?

The Court: Yes.



Mr. De Anda: Your Honor, I have no objections to this, and if the Court will entertain it, I would like for the Court to visit that area of the jail. I think it's going to be very difficult to describe it, and it might be, unless you are familiar with it, Judge, and I have no—I would suggest to the Court that this be done so that we can know what we are talking about here, unless we can get a blueprint or something, and I just overlooked it. There may be one available, but if there is none, would the Court consider that?

The Court: Mr. De Anda, I will take it under advisement. If we get further on into the case and I feel like it will be of help, I will do it.

Mr. De Anda: I will see if we have [35] available some sort of floor plan.

The Court: All right.

Mr. Bowers: Excuse me, Your Honor, I have got tight quarters here.

The Court: That's all right.

By Mr. Bowers:

Q. (Drawing on blackboard) Now, Mr. Davis, I'm going to draw a diagram on the board here, and if I make a mistake in the process of this, don't lay this out just exactly as it is, I want you to correct me and tell me how to, how it is. Would you do that for me, sir?

A. Yes, sir.

Q. All right, sir, now as you come up into this area

on the floor above the main floor of the jail, where the isolation cells are located, you come up a stairwell and go through a door. I will draw a small diagram on the board here, and as you come up there, there is a door that opens out into a fairly open area, is that correct, sir?

A. Yes, sir.

Q. All right, sir, and now there is another door that goes into this miscellaneous—

A. —Miscellaneous tank.

[36] Q. Miscellaneous tank, which is a, sorta a tier of cells, I believe you told me, did you not, that there were five cells back here? (Indicating)

A. In miscellaneous?

Q. Yes, sir.

A. There's only three to a row.

Q. Three to a row?

A. Yes, sir.

Q. So you have a block of cells that come about like this?

A. Well, the miscellaneous tank?

Q. Yes, sir.

A. That miscellaneous tank, there are five of them.

Q. Okay, sir, so you have five of them, one, two, three, four, five cells, and in this area, over here, as you come in there, there is sorta a big day room and then there is a cage or a walled off area where you have miscellaneous and where you have these other items, is that correct?

A. Yes, sir.

Q. Okay, and this is walled in, and you have here, this is isolation. (Indicating) Now as you [37] go into the isolation, there is a small door just about right here, is there not?

A. Yes, sir.

Q. All right, sir, and there are, there is a row right here of three cells?

A. Yes, sir.

Q. Now if my memory serves me correctly, there are one, two wet and one dry cell, is that correct, sir?

A. Yes, sir.

Q. Okay, sir, now the two wet cells are located on the end?

A. Yes.

Q. Are they not, in other words, you have a drinking fountain and commode in this area, and then there is a similar set-up on the rear with three cells likewise?

A. Yes.

Q. One dry and two wet, is that correct?

A. That's right.

Q. Now this end cell is what is known as a wet cell, and this is the one in which Mr. Logue was located, is that right, sir?

A. That's right.

Q. All right, sir, now each of these cells are [38] constructed, are they not—

A. —Yes, sir—

Q. —of a solid steel wall with holes approximately an inch and a half or two inches in diameter, cut out of them; in other words, it is a perforated steel wall?

A. Uh-huh.

Q. Okay, at this time do you recall whether or not they had welded this steel wall with this angle iron that they used to keep the prisoners from rattling

these cells, do you recall whether or not that was on at that time?

A. I don't.

Q. Okay, you did not observe it that closely?

A. No, I didn't.

Q. All right, now is there an entrance between this isolation area and this miscellaneous tank, is there an area between this walled off area and the isolation tank?

A. Well, what kind of an area are you talkin' about?

Q. I'm talking about where you have the isolation area, where you have the two tiers of small cells, and next to the miscellaneous tank, and now there is a door here that you go through here, in what you might call a day room, what [39] do they call it down there in the jail?

A. Well, it's called, they just call it the tank.

Q. The tank? Okay, and then this edge here is the edge of the area containing these two tiers of cells, and this cell—

A. —You've got it drawed wrong. The doors is right here in front here, and it is not like you have got it there. (Indicating)

Q. Okay, would you like to take the chalk and show me how it is?

A. Yes. The door is right here. (Indicating)

Q. Okay, why don't you take the eraser here and—

A. —It is set out like this here, it sets out about something like this here, and this is the door right here.

Q. Okay.

A. And you can see from, from, you see, it is iso-

lated down here but you've got about that much, about, about three or four foot that you can see right straight down, you can see, there's a window here. (Indicating)

Q. Uh-huh, okay, sir.

A. There is a window here and you can see right straight down from, all the way, all the way exactly past that isolation door here and the [40] tank over here, you can see all the way across to this tank down here.

Q. Okay, there is another tank down in here, but my question is—as far back as the row of cells where Logue was, what is, is there, is there a door or anything from this area over to the rear, or over to the area where these tanks were located?

A. No, it is not, it's not, you can just holler from this wall here over to this wall here.

Q. What is this wall constructed of in here?

A. Steel, it has holes in it, you know, a little hole, a little hole.

Q. A little hole about an inch and a half?

A. Yeah.

Q. A little, there are little small holes in there?

A. Yes, sir.

Q. How many people were in the miscellaneous tank at that time?

A. Oh, I think twenty.

Q. Okay, you were talking about going back and forth, I believe you told me you were playing poker most of the time, is that right?

A. Yes, sir.

Q. Okay, would you sit back down, sir. Now when [41] you talked to Logue, did he ever answer you?

A. He did.

Q. What did he say?

A. I say how was he doing, and he say he was doing all right.

Q. Okay, did he seem depressed or despondent to you at that time?

A. No, he didn't.

Q. Okay, sir, did you have a chance to see him when they brought him back in?

A. I saw him when they brought him up.

Q. Okay, did you observe anything, any bandages?

A. He had some bandages on.

Q. Okay, did it occur to you, did it occur to you at that time that perhaps Logue might have considered taking the bandage off his arm and hanging himself?

A. No.

Q. That thought never occurred to you at all, did it?

A. No, it didn't.

Q. Okay, sir, now it is your testimony, I believe, that never during the course of this day, from noon on until they found him, did any official of the jail come into that cell?

[42] A. No, they didn't.

Q. Okay, you are positive of that?

A. I am positive of it because, you know, if you're ever, well, like I said, you'd have to go up there in the jail to see, and when you go up to see you will see where you go up there and when the prisoners hear the keys, they are goin' to jump up and go to the windows, they're goin' to be hollerin' to see who is comin', this happens all the time. Just like talkin' to the jailer, they don't come up there unless they

come up there, they have to come up for somethin', they have somethin' to come up there for.

Q. Well, now there is a corridor here, back here behind the isolation and behind the miscellaneous tank, is there not?

A. That's right.

Q. And I believe there is a back door in between here, isn't there?

A. Yes, sir.

Q. And I believe you also said that the area where the, where they kept a time clock at the time—

A. —They didn't keep, they didn't keep the clock back there; they punch, they carry the clock with them on his shoulder and they punch it.

[43] Q. What do they do, punch the clock up there, they've got a key or something to punch it with, is that right?

A. Yeah, that's right.

Q. Okay, and you say this is only done at night?

A. Yeah.

Q. It is not possible that someone could have gone back down here while you were up at the front playing poker and perhaps observed Logue in the cell without—

A. Back there? (Indicating)

Q. Yes, sir.

A. No, you see, because they have to open that door, and when they open that door, I'm going to hear and everybody else.

Q. How did you come out in the poker game, did you win or lose?

A. Lost, I'm runnin' in bad luck sometimes when I am not cheatin'.

Q. The last part of your answer was, you are runnin' in bad luck when you are not cheating, is that what you said?

A. Yes, sir.

Q. Okay, sir, and how many people were there in this poker game?

[44] A. There was about five of us, five of us playing.

Q. Okay, and were you paying attention to your poker game, though?

A. Oh, I'm goin' to pay attention to my money.

Q. All right, sir. Now jail at that particular time was not a new experience to you, was it, Mr. Davis?

A. No.

Mr. De Anda: Just a moment, Your Honor, I'm going to object to that question because it is not relevant to any matter in this case. No. 1, if he is trying to impeach the witness, of course, there is a, an appropriate and proper way to do that by his convictions, I am sure he has a right to do that, but as far as the jail being not a new experience to him, I don't see the relevancy of that.

Mr. Bowers: May I explain, Your Honor?

The Court: Yes.

Mr. Bowers: The relevancy is this, Your Honor, there are several possible explanations for this witness' testimony. One, of course, is that no one actually did come up there to observe Logue; one is that, [45] of course, he is not being truthful, or there is the possibility that he simply was not paying close enough attention, because this is what I am trying,



attempting to show, that he is used to jail routine, he had been there a number of times, and perhaps the arrival of someone into this area would not be as novel an experience to this particular person as it would to someone, say, that was not so involved, and what I am attempting to do is just show his, Judge, show that he was used to the routine, and to support our theories, that there was a chain of observers that he didn't catch.

Mr. De Anda: Your Honor, if they, in fact, bring in any testimony that there were frequent visits to Reagan Logue's cell, which is refuted by a statement that I have, that was provided me by the Government from the Sheriff, I believe in any event, I think that this approach or trying to use this guise as a means to properly impeach the witness is improper. It is just wrong, Judge, and I think that [46] any—the remote possibility that this theory of his, that he is attempting to show the Court, that he would not notice anyone, is far out of the way by its prejudicial effect, and I just don't think it is proper even though it is a trial before Your Honor, and I recognize that, but I just feel that he is just trying to use this as an excuse and it doesn't have any relevancy or have much weight one way or the other to this man's testimony. And his explanation as to why he would be aware of someone coming, as he has explained it already, I don't think it is relevant, Judge, at all, and I think it would be improper to go into it.

The Court: Well, I think he could testify if he had been in this particular cell any length of time before—

Mr. De Anda: —All right, sir.

By Mr. Bowers:

Q. Had you been in this particular area any length of time before, sir?

A. No.

Q. Okay, in other words, that was the first time [47] you had been up there?

A. That's right.

Mr. Bowers: Of course, Your Honor, I would say that this goes back to the point of what I am talking about—a man who is used to the jail routine, the coming and going of guards would not be as much a matter of note to this particular gentleman as it would be to someone else, and that was the thrust of my question. I think it is obvious that Mr. Davis was incarcerated at the time and, and that he has testified to the conviction of one felony already. My records indicate that there is another, it relates to two convictions, there is still another felony which would also be proper, and I think at this time point that his experience in, in, in another jail would be relevant to his testimony.

The Court: Well, I'm going to sustain the objection to any further testimony on that point.

Mr. Bowers: Thank you, sir.

By Mr. Bowers:

[48] Q. All right, now, sir, it is your testimony, then,

that if a guard had been up there you would have noticed him?

A. Yeah.

Q. And that you did not notice any on this occasion until such time, until such time as Logue was actually found to have been, to have been found dead in his cell that afternoon?

A. Uh-huh.

Q. Okay, now when Logue's body was discovered, do you recall the sequence of events and what happened then?

A. After they found him laying in there, they brought him out and went and got the jailer, went and got two trustees to bring him out, and they, and they brought him out. He didn't have nothin' on but his shorts and his face was blue.

Q. Do you recall who cut him down?

A. No, I couldn't see.

Q. Okay.

A. I couldn't see who cut him down.

Q. In other words, your observation from back there into this area where Logue was located, (indicating), from here, was very limited, was it not?

A. Yes.

[49] Q. In other words, you had this small perforated wall, wire screen around here, and this tier of cells, and you also had, had the iron work that surrounded that particular cell—

A. —Uh-huh. (Shaking head yes)

Q. All right, sir, and so actually your chance to observe him back there, or observe what went on, was somewhat negligible, was it not?

A. Uh-huh.

Mr. De Anda: Judge, I can't hear either the question or the answer.

Mr. Bowers: I'm sorry, Mr. De Anda, It's my fault in failing to talk to the witness rather than—

Mr. De Anda: —Well, if you would talk louder, please.

Mr. Bowers: I will, but it is difficult to refer to this diagram otherwise—

The Court: —You might swing that around further so everybody can see it better, including myself, please.

By Mr. Bowers:

Q. All right, Mr. Davis, there are, there was a conviction of a felony which you told us about, the car theft, was that the only felony [50] conviction that you have ever had on your record?

A. At that time, yes.

Q. Ever, I'm talking about—

A. —Well—

Q. —Since then?

A. Since then?

Q. Yes, sir.

A. I had only one since this, this case here occurred.

Q. So that would be two, would it not?

A. Yes, sir.

Q. What was the second one for, sir?

A. Car theft.

Q. Car theft?

A. Uh-huh.

Q. All right, Mr. Davis, when was the first time you were contacted and asked to give testimony in these proceedings?

A. Oh, it was way back in September of '68.

Q. September of '68?

A. Yes.

Q. And where were you at that time?

A. In jail.

Q. All right, sir, who did you talk to?

[51] A. My Mother.

Q. All right, did you talk to the lawyer, Mr. De Anda or—

A. —No—

Q. —Mr. Edwards?

A. The first time I met Mr. De Anda was yesterday.

Q. All right, where were you when you were first asked to come here and testify today in Court?

A. It was at my apartment.

Q. Where?

A. At my girlfriend's house, it is on Lake.

Mr. De Anda: I'm sorry, where?

By the Witness:

A. On Lake Street.

Q. Here in Corpus Christi, is that right?

A. Yes, sir.

Q. Now you discussed this matter with Mr. De Anda, have you not?

A. Yes.

Q. All right, sir, and did you contact him or did he contact you?

A. Well, my father contracted me and I called him.

Q. All right, sir, do you know whether Mr. De Anda contacted your father or your father went to see Mr. De Anda?

[52] A. He contacted my father, I believe. No, I think it was my, my father say it's one of his, one of his investigators contacted him, talked to my father, and then he contacted me.

Mr. De Anda: Your Honor, I don't think the witness knows, but I will be glad to inform Counsel. I sent one of my investigators to see if we could find Mr. Davis, and he didn't find Mr. Davis, he found Mr. Davis' father, and Mr. Davis' father apparently contacted Mr. Davis, and Mr. Davis informed me he was leaving, going to Arizona, as I remember, and I asked him to stay. That was it.

By Mr. Bowers:

Q. Are you being reimbursed any of your expenses to come to Court and testify, sir?

A. No, sir, there wasn't.

Mr. Bowers: That's all, Your Honor, that we have of this witness. Thank you.

[53] REDIRECT EXAMINATION

By Mr. De Anda:

Q. Your Honor, we—you don't have any expenses for coming to Court, Lorenzo, but you were paid

Twenty Dollars, were you not, when you got your subpoena this morning?

A. No.

Q. Didn't they give you a check for Twenty Dollars down there at the Clerk's Office—

A. —They have it—

Q. —or the Mashal?

A. Yes, sir.

Q. All right, and I told you also, just to clarify the record, Your Honor, and this wasn't in connection with expense for coming to Court, but it was my understanding that Mr. Davis had a ride to Arizona and I told him if he would stay that I would pay plane fare for you, from here to Phoenix, where you were going, if you decided to go?

A. Yes, sir.

Q. And I don't think I gave you the amount, I just told you that I would give you the plane ticket, is that right?

[54] A. Yes, sir.

Q. I wanted to be sure you understood, we are very candid about it—

A. —Yes, sir.

Mr. De Anda: That's all I have of this witness, Your Honor.

Mr. Bowers: Your Honor, I would like to have this witness remain on call during the course of the trial. We anticipate this issue will be contested in view of later developments, and I would like to have him available to be called back.

The Court: All right, you may step down for the time being, but you remain on call. Mr. Marshal, would you take Mr. Davis to the witness room?

The Marshal: Yes, sir.

Mr. De Anda: The Marshal has the money, that's the reason he didn't say anything about it.

The Marshal: I didn't get a chance to serve him.

The Court: All right.

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#### WITNESS EXCUSED

[55] Mr. DeAnda: Your Honor, we will call as our next witness, Mr. Foster, Mr. Marvin Foster.

The Court: All right.

Mr. Bowers: Sir, may I retrieve my notes up here, they fell down beside the jury box?

The Court: Yes. I think if you will pull the back end of that a little bit more forward, this way, that it may be a little bit easier to see.

Mr. Bowers: Yes, sir, I'm sorry.

The Court: I know it is difficult.



[56]

MARVIN FOSTER,

was called as the next witness on behalf of the Plaintiffs, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

## DIRECT EXAMINATION

By Mr. De Anda:

Q. Please state your name.

A. Marvin Foster.

Q. Mr. Foster, what is your business or occupation?

A. I am a lawyer.

Q. And are you licensed to practice law in the State of Texas?

A. Yes, sir.

Q. I believe you do a considerable amount of criminal law in your business?

A. Yes.

Q. Did you know, during his lifetime, Reagan Edward Logue?

A. Yes, sir, I did.

Q. And do you also know Mr. Orval Logue?

A. Yes, sir, I do.

Q. And do you know Mr. Logue's ex-wife, the mother [57] of Reagan Logue?

A. Yes, sir.

Q. Did you have the occasion to represent Reagan Logue during his lifetime?

A. Yes, sir, I did.

Q. And were you representing him with reference

to the matter for which he was jailed back on May the 22nd, 1968?

A. Well, I considered that I was Reagan's lawyer. I actually had been first retained to represent Reagan in another matter, and while that was pending, he was arrested on the 22nd, I believe, on a separate criminal matter, but so far as I was concerned, I was his lawyer in that case, too.

Q. All right.

A. And I considered that I would have been, at any rate.

Q. All right, on the 22nd day of May, 1968, which, I believe, is the date of his arrest—

A. —Yes—

Q. —where were you?

A. My recollection is that I was in the Nueces County Courthouse. I don't know whether we were in trial or whether I was just down there, or [58] whether I was actually in Court or not, but I know that I talked to his step-mother from the, from the telephone in the office of the Court Reporter for the 105th District Court.

Q. All right, and at that time, at the time that he was arrested, Reagan was staying with his father and his step-mother, if you know?

A. Well, yes, he was staying with them, I am sure, most of the time. I think he spent, he would go back and stay with his natural mother some, a few nights or something, and then stay, well, at the time he was there at, at his father's and step-mother's house, at any rate.

Q. All right, after you learned of his arrest, did

you have the occasion to see Reagan before he was placed in jail?

A. No, I didn't.

Q. And you were not present when he was arraigned before the Commissioner, or taken before the Commissioner following his arrest?

A. No, I talked to the Commissioner, Mr. Martin, as soon as Mrs. Logue called me and said that they had arrested Reagan, and I asked her, I think, how long they had been gone. It was five minutes or so, that was the reply, and I [59] immediately called the Commissioner's Office, and the Marshals, or a Marshal and Reagan were in the Commissioner's Office at that time.

Q. All right.

A. But I didn't go over there after I talked to the Commissioner, then, I didn't go.

Q. All right, when did you, what next happened with reference to Reagan that was unusual, or that you recall was in connection with his incarceration there in the Nueces County Jail?

A. Well, I had several telephone conversations with Mr. Orval Logue, and it is possible that he came by my office even that afternoon to discuss what our steps were.

Q. All right.

A. And I am sure I had telephone conversations with Reagan's natural mother, too, about what would happen, why he was in jail, what we were going to do about it, and so forth.

Q. All right, did you have any conversation with Reagan?

A. None until the following morning, I believe that was the 23rd.

Q. Was that before or after he was taken to the hospital?

[60] A. That was before.

Q. All right, and following this conversation with Reagan, when—was that in the County jail?

A. That was in the Nueces County Jail.

Q. All right, and thereafter did you have the occasion to see Reagan again?

A. I saw him that afternoon at, about, oh, shortly after 5:00 o'clock in the Emergency Room at Memorial Hospital. It was on a Thursday afternoon, the 23rd, I believe.

Q. And what was the occasion of your being at the Memorial Hospital?

A. His father, Mr. Logue, had telephoned me.

Q. All right, and following that telephone conversation, you proceeded to the hospital?

A. Yes, I went to Memorial Hospital to the Emergency Room.

Q. And what, what, if anything, was wrong with, with Reagan?

A. Well, he was on a stretcher that—not a stretcher, an emergency type bed in one of these alcoves where they draw the curtains, and he had some lacerations on his, either one or both wrists, I don't remember which, and appeared, you know, sorta in a state of shock.

[61] Q. Did you talk to him at that time or attempt to talk to him?

A. I talked to him. I don't remember what the conversation was exactly, but it was just to the extent of, you know, like patting him on the shoulder and

saying, "Don't worry, everything is all right," and things like that.

Q. All right, now who else was present when you talked to, to Reagan there in the Emergency Room?

A. Well, Mr. Orval Logue was there, and, I believe, Reagan's step-mother was there. And Reagan, of course, and there was a nurse or two on duty, and there was an intern there named Dr. White, I believe it was White.

Q. All right, after you arrived and after you talked to him, how long did you remain there, do you recall?

A. Somewhere between thirty minutes and an hour, I would think. I'd say at least thirty minutes, and possibly as long as an hour.

Q. All right, and while you were there, was there any effort to attempt, or attempt to obtain any other services of any other physicians other than Dr. White who was there in the Emergency [62] Room?

A. Yes, we made an attempt—well, I say we—I stood by the telephone while either Dr. White or the nurse on duty, or in charge, attempted to, I believe she first tried to get ahold of Dr. Shannon Gwin, and then she later was, she was unsuccessful, I think, and then she later actually got in contact with a psychiatrist by the name of Walker.

Q. Dr. Gwin is also a psychiatrist?

A. Yes.

Q. Because of, do you know what the purpose was of trying to get these psychiatrists, what it was?

A. The purpose of that was that, that after we had observed Reagan, and we had talked to Reagan, we had talked to this intern that was preparing to su-

ture him, take care of him there, and, and Mrs., Mr. Logue, and I had conferenced and consulted about Reagan, and it was the family's feeling and my feeling that he should be committed from the Emergency Room directly to the psychiatric ward, we wanted him to go to the psychiatric ward, but there was no way to get him in there without a psychiatrist [63] arranging the admission, or it wasn't, it wasn't a commitment, I guess it would be an admission, and he was asked to prescribe whatever medicine he was to have.

Q. All right, now—and were you able to effect his admission into the psychiatric ward?

A. Well, I didn't hear what Dr. Walker was saying on the telephone, but I know that he talked to the nurse, I think probably he talked to Dr. White. Now I don't specifically remember that, but I am sure he did, and as a result of those conversations, we were then told by the nurse on duty, or Dr. White, that, that Dr. Walker had ordered his admission to the psychiatric ward and had prescribed certain sedatives, or whatever psychiatrists prescribe; at any rate, he had arranged for Reagan's admission and his medication.

Q. All right.

A. With the understanding that he was doing that as, as a, as Reagan would be Dr. Gwin's patient; Dr. Walker simply was doing it as a casual courtesy to Dr. Gwin, and because of the, the emergency nature of what we needed.

Q. All right, well, following these arrangements [64] there in the hospital, and the admission of Reagan into the psychiatric ward, did you then leave the hospital or what did you do?

A. I left the hospital and went home.

Q. All right, when did you next have anything to do with Reagan Logue or, or his incarceration and confinement either at the hospital or in jail?

A. Well, let me—I'm going to have to explain my answer—actually, from the time that Reagan was arrested on Wednesday afternoon, through that night, through all day Thursday, and then after he was taken to the hospital, and then all day Friday, and most of Saturday, I would say there was a lot, that a lot of my time was devoted to the Logues. By that I mean there were telephone conversations, I was calling the Court in Austin, I was calling, attempting to get ahold of the U. S. Attorney in Laredo, and there were various telephone conversations, so I don't know what you mean, when did I next have something to do with it.

Q. All right, what was the purpose of these calls?

A. May I just explain this—Reagan had been under indictment in Austin, as I recall, there [65] had been two indictments up there, and there were multiple defendants in both indictments. There were multiple counts in both indictments, but Reagan was not charged in each count in each indictment. And we had gone up in March, I believe, and had entered a plea of guilty to the, to all of the misdemeanor counts in both indictments. There were also some felony counts; the, the misdemeanor counts had to do with barbituates or hallucination drugs, or those kind of charges, and the sentencing had been set for May the 23rd. And our conversation, the family and I in conference with Reagan earlier, the earlier part of that week, this was on a Thursday, that would

have been the 23rd, had been with reference to what might occur at the sentencing and what our plans would be, whether we would drive up together to Austin, or whether we were going to meet up there and so forth. And so Wednesday afternoon is really when, immediately after his arrest, that I had to start making some arrangements concerning us not being present in Judge Roberts' Court in Austin the next morning. And I had several conversations with Judge Roberts' office, [66] and I think with the U. S. Attorney's office in San Antonio, who was prosecuting it.

Q. All right, well, that didn't answer my question properly, Mr. Foster. Let me put it this way—when did you next have any conversation or do anything with reference to the incarceration here in Corpus Christi?

A. You mean after I left the hospital?

Q. Yes, sir.

A. Well, I believe I had a conversation that night after I left the hospital with either Mr. Vaught or Mr. Logue.

Q. All right, was any of the, were any of the Deputy Marshals, U. S. Marshals in Corpus Christi at that time, to your knowledge?

A. It is my knowledge that neither of them. That Mr. Shorre who was also assigned here, I believe he had gone to El Paso to deliver prisoners, or something. He was out of town, and Mr. Bowers from the valley had been up here working, and I think he is the one that actually arrested Reagan on Wednesday. For some reason he had an appointment out of town on Thursday, and there was not, up until the time



I left the hospital, there was not a United States Attorney, [67] I mean a United States Marshal available in Corpus Christi.

Q. All right, following your conference with the doctor at the emergency room, or on the telephone, or however it happened, and attempting to arrange his admission into the, Reagan's admission into the psychiatric ward, was there any effort on your part made to keep Reagan in the hospital in the psychiatric ward?

A. That night?

Q. Any time.

A. Yes, the following morning, of course that night we knew he would be, would stay in the psychiatric ward, and I believe that a Deputy Sheriff stayed there with him.

Q. All right.

A. I don't recall, don't recall who, which Deputy it was that took him out there, whoever, there was always a Deputy Sheriff in attendance in the emergency room.

Q. All right, now the next day, the following day, which would have been the 25th—

A. —The 24th.

Q. The 24th, excuse me, which would have been the 24th, what did you do with reference to [68] Reagan's hospital stay?

A. I came to the Federal Building here pretty early that Friday morning. I think it was probably right at 9:00 o'clock, or shortly after 9:00, to see the United States Marshal concerning what we were going, what was going to be done with Reagan.

Q. All right, and to whom did you speak, do you recall?

A. To—I went in the Marshal's office and, and talked to Mr. Bowers.

Q. All right, and did Mr. Bowers give you any indication of what was going to happen, or what was going to be done about Reagan?

A. He didn't know. He was working on it at the time and he had, excuse me, I believe he had already talked once to, to the office in Laredo, and I believe he had talked to Mr. Jones in Laredo, and he then, while I was there, in my presence, he called Mr. Jones back on the government, government line, or phone system that they have.

Q. All right, and what was the nature of the conversation and what, what was actually said as you can best remember?

[69] A. Well, may I back up a minute because starting the day before, on Thursday morning, before Reagan ever went to the hospital, when Mr. Logue and I went up to the jail to see Reagan, this was for the purpose of, of us attempting to persuade Reagan to let me file a Motion to have him examined by a government psychiatrist, or committed to Springfield, I believe that's where they send them, but I wanted to, I wanted to get his permission to do that before I filed such a Motion either in Austin or in Laredo where this new case, the indictment had come from that caused his arrest. And Reagan was enthusiastic about it. We had anticipated having to try to convince him to let us do this for his own good, but he just readily accepted it, and he was enthusiastic about the idea of going to the hospital. Maybe it was, well, I don't know a lot about it, but I tried to explain to him what the institution was that he was going to,

and what the purpose of his going up there was for. Anyway, he was enthusiastic about that, and I then tried to contact Mr. Ronald Blask who was then with the United States Attorney's Office. After I left [70] the jail I went back to my office and started trying to get in touch with Ronald Blask in Houston, who at that time, I believe, was in charge of the criminal prosecutions over the Southern District, or at least he was in charge of the Laredo docket, and for the purpose of, of explaining to him what I wanted to do, and I was informed that Mr. Blask was on his way to Laredo. So then I called Laredo and left, I never, he hadn't gotten there, and I left word with Mr. Leyendecker, the Clerk, and told him what I wanted. And he said that he would leave word for Mr. Blask to call me, that he expected him before 5:00 o'clock that afternoon. He knew that he was in route to Laredo. And then, of course, after this thing happened on Thursday night, it became, in my opinion, a real critical situation to try to do something with Reagan with reference to keeping, keeping him in the hospital rather than the jail. And that was why, after explaining all of this to Mr. Bowers that morning here in the, Friday morning here in his office, I think that preempted his call back to Mr. Jones so I could then talk to Mr. Jones and attempt, and tell him what we [71] wanted to do. Now your question was what that conversation was?

Q. Yes, sir.

A. The conversation with Mr. Jones at that time, at that time that morning was, I think, that Mr. Bowers probably had already brought him up to date about what the situation here was, but I think I also

went into the matter as to what, what our situation, the immediate situation was here in Corpus Christi. And I informed Mr. Jones what I had tried to do the day before, and that I wanted very badly to talk to Ronald Blask. Mr. Jones, I don't remember the exact words, but he informed me that Mr. Blask was in Court on business and that Judge Connally was on the Bench, and that he would—I told him that I was available to come to Laredo that morning if we had to be present in Court and do this, that I had contemplated coming down the night before but I didn't because I wanted to talk to them first.

Q. By doing this, you mean—

A. —Filing a Motion to have him committed for psychiatric examination.

Q. All right.

[72] A. Mr. Jones told me that, that—first, it would save me a trip, I believe, to Laredo, first he would take it up with Mr. Blask at the earliest possible moment and tell him what the situation was, and if necessary, talk to Judge Connally about it, this was maybe 10:00 o'clock that morning, 9:30, or 10:00 on Friday morning.

Q. Was Mr. Jones aware, from the tenor of your conversation, was he aware that Reagan had attempted to take his life?

A. Oh, yes, I would say so.

Q. All right, and following that last conversation with Mr. Jones, did you, what happened next with reference to the commitment, and we are talking about Friday morning now?

A. I don't know that anything further happened with reference to the commitment Friday morning.

My recollection is that it was shortly afternoon when, I believe, Mr. Bowers called me, and at any rate I was informed that Judge Connally had signed an Order that, that the United States, that the government had joined in, in other words, they had taken the initiative and that it wouldn't be necessary for me to file any Motion for it, that they had taken the [73] initiative and that Judge Connally had signed, had already signed the Order, or was in the process, it was in the process of being typed and presented to him. At any rate, he had agreed to sign the Order directing that Reagan be committed to Springfield for psychiatric evaluation.

Q. All right.

Mr. De Anda: Your Honor, I have Plaintiff's Exhibit No. 2, which has been marked by the Clerk as the next number, No. 2, and we have a Plaintiff's Exhibit No. 1 that will be introduced later, Judge—which is the Order signed by Judge Connally on May the 25th, 1968, in Criminal Action No. 68-L-208, styled The United States of America versus Reagan E. Logue, which is an Order directing a ninety-day commitment so that he may be examined by a psychiatrist, and it states among other things, that the United States Attorney, having reason to believe that the Defendant may be presently insane, or otherwise so mentally incompetent as to be unable to understand the proceedings [74] against him, or properly assist in his own defense, and should be examined by, examined by one or more qualified psychiatrists, to determine whether or not the Defendant is mentally competent at this time and so as to be able to

understand the proceedings against him, and properly assist in his own defense. And then it proceeds to have him ordered, and Counsel has a copy, in fact, he obtained this information for me, Judge—

The Court: — Do you have any objections?

Mr. Pain: I have no objections.

Mr. De Anda: So I would, I would offer Plaintiff's Exhibit No. 2.

The Court: It will be admitted.

By Mr. De Anda:

Q. You were notified about this Order about what time, Mr. Foster?

A. It is my best, my best recollection is 2:00 or 3:00 o'clock P.M., it was afternoon, I believe.

Q. All right, after being—

Mr. Pain: — Excuse me, was that on the 23rd or the 24th?

The Witness: This was on Friday, I guess [75] the 24th.

By Mr. De Anda:

Q. Reagan died on Saturday, the 25th?

A. Yes.

Q. So that then the Order, to your best recollection, was entered sometime in the afternoon of the, of the 24th?

A. Mr. De Anda—

Q. — I'm sorry—

A. —I don't know when it was entered. I have never seen it, I was just advised.

Q. The Order was actually entered the 25th, according to the Order here.

A. I really think the information I got was that, that the matter had been resolved in Laredo; that Judge Connally was, that Mr. Blask had taken it and perhaps Mr. Jones had taken it up with the Judge, I am sure that's what happened probably at a recess, now that's just a guess, but at any rate, that, that, either an Order had been signed or the Order was being prepared, it was not going to be necessary for me to go to Laredo and appear in Court, it wasn't going to be necessary for me really to do anything further on the matter. That the government had [76] taken the initiative and Judge Connally was going to order, was going to order, or had ordered him to be taken to Springfield at the earliest opportunity.

Q. All right, now following this, did you have any, did you do anything or have any further conversations concerning Reagan Logue's hospitalization or continued hospitalization in Memorial?

A. Well, at the same time that I got this information about the Order—now I am sure that came from Mr. Bowers—there was a discussion between he and I then about when he would be taken to Springfield, and because of the situation here, I was given to understand that it probably would be the first of the week, Monday, or there wasn't any way to move him before Sunday or Monday or Tuesday of the



following week, and we discussed what was going to be done with him in the meantime.

Q. All right.

A. We had already discussed that, we had discussed that, this morning, Mr. Bowers and I, and Mr. Bowers in my presence discussed it with Mr. Jones on the telephone.

Q. Was anyone else present during these conversations [77] that you had with Mr. Bowers?

A. Not to my knowledge. They were, other than the telephone conversations, the face-to-face conversations were had in the Marshal's office.

Q. All right, was Mr. Vaught present during any of these conversations, if you recall?

A. I think I had some conversations with Mr. Vaught that morning while I was here in the building. I know that—I don't believe he was, no, I don't believe he ever was actually present when we, Mr. Bowers and I, had any conversations, other than maybe we saw him in the hall and that was it.

Q. All right, now did you have any further conversations with Mr. Jones or anyone else in the Marshal's office pertaining to Reagan's continued stay at the hospital?

A. Well, I had a conversation with Mr. Bowers that afternoon, and then I had a conversation with Mr. Jones late in the afternoon.

Q. All right, and what prompted this conversation?

A. The one with Mr. Jones?

Q. Yes.

A. Well, I was informed by Reagan's mother that, by telephone from the hospital, that they were [78] taking Reagan back to jail.



Q. And was your conversation with Mr. Jones, what was its purpose?

A. Well, I think again at that time, when she told me that, I believe that I talked to Mr. Bowers.

Q. All right.

The Court: Mr. De Anda, I'm going to have a short recess. We will resume again at 11:00 o'clock, and I would like to ask this—if there is—we're getting a lot of, "I think," and "I am not real sure about this," if perhaps we could get direct testimony based on your questions rather than so much narrative, I think this would save some time.

Mr. De Anda: All right, sir.

The Marshal: Everyone rise, please.

We will recess until 11:00 o'clock.

(After a short recess, Court reconvened, in the above entitled and numbered cause, all parties present and presiding as before, and the [79] following proceedings were had, to-wit:)

The Court: Mr. De Anda, you may proceed.

By Mr. De Anda:

Q. Mr. Foster, to continue, I believe you stated earlier you were, you were present during a telephone conversation between Mr. Jones and Mr. Bowers?

A. Yes, sir, on Friday morning.

Q. On Friday?

A. The 24th.

Q. What was that conversation, to your best recollection?

A. Well, Mr. Bowers brought, talked to Mr. Jones about the situation here, and told him that he had talked to, or had seen the doctor, and that in his opinion and in, and that the doctor had informed him, that the boy should be kept in the hospital because he had prevalent suicidal tendencies and psychological problems. And then they talked about the possibility of, or the necessity of a guard; Mr. Bowers expressed that in his opinion someone should stay at the hospital, that he would try to get some Deputy [80] Sheriff to stay, and that he had been out of town for two or three week-ends, he had missed being with his family, and he had planned to go to Edinburg that week-end to be with his family, but that he would stay himself and do part of the guard duty.

Q. All right, now was there any ultimate decision reached insofar as you could hear from Mr. Bowers, because you were not engaged in the conversation, and it was not a three-cornered conversation, was it?

A. No, he had a conversation with Mr. Jones on the phone, and then I had one, but we did not all three talk at once.

Q. All right, and at that point, was there any decision made, either temporarily or otherwise, as to whether or not Reagan Logue would remain in the hospital from what Mr. Bowers conveyed to you?

A. Well, they—Reagan was going to stay in the hospital until Mr. Jones got back in touch with Mr. Bowers. There was a decision between Mr. Bowers and I as to what ought to be done, but, but not between Mr. Jones and—

Q. —All right, then after Mr. Bowers concluded [81] his conversation with Mr. Jones, did you have a conversation with Mr. Jones?

A. I had a conversation with Mr. Jones, and it was during the conversation with Mr. Bowers, I talked to Mr. Jones and then Mr. Bowers got back on the phone and talked to him.

Q. All right, then as I understand it, that, at that point, Reagan Logue was going to remain in the hospital until Mr. Bowers and Mr. Jones talked further?

A. Yes, until Mr. Jones took the matter up with the U. S. Attorney and with Judge Connally.

Q. All right, now after that conversation, did you leave the Marshal's office or wherever you were talking from?

A. Yes.

Q. And when did you next have a conversation pertaining to the, to Reagan's incarceration, with either Mr. Jones or Mr. Bowers, or anybody connected with the government?

A. Well, it was late that afternoon, about 3:00 or 4:00 o'clock, I talked to Mr. Bowers by telephone. And then shortly after 5:00 o'clock, it was shortly after 5:00 o'clock, but just a few minutes after 5:00, I talked to Mr. Jones by [82] long distance. He was in Laredo.

Q. Did Mr. Bowers ever express any opinion to you as to whether or not Mr. Reagan Logue ought to stay in the hospital?

A. Yes, he did.

Mr. Bowers: Your Honor, I think that calls for

speculation and an opinion on Mr. Foster's part, and would be a conclusion and would not be admissible in these proceedings.

The Court: I agree; I sustain the objection.

Mr. De Anda: Judge, I am in this predicament with the Court's ruling—that our position is that it was the government's decision, acting through its agents, to remove, to remove Reagan from the hospital, and whether the decision is a wise one or not, that's exactly my, the whole point of my case; that we have to get into these conversations, I think they are admissible since they were acting in the scope of their employment.

The Court: I think conversations are admissible, and I think the acts are [83] admissible, but I think your conclusions probably are not.

Mr. De Anda: All right, sir. Well, without belaboring the point, Judge, may I ask the witness as to whether or not Mr., Mr. Bowers expressed any opinion, or if he said anything with reference to whether or not Reagan should remain in the hospital, and if so, what was it that he said?

The Court: I think that comes, Mr. De Anda, here is, here is the way it looks to me—whether you lined up six U. S. Marshals and asked each one their opinion with regard to it, you might have a difference of opinions. I don't think the, the conclusion that the Marshal might have expressed prior to mov-

ing him or prior to leaving him there would be admissible, or prove anything, or establish anything.

Mr. De Anda: All right, sir.

By Mr. De Anda:

Q. All right, now, Mr. Foster, let's get to your conversation with Mr. Jones that afternoon, which is Friday afternoon—

A. —Uh-huh—

[84] Q. —What was the occasion of the conversation, and by that I mean did you call him or did he call you?

A. I called him.

Q. What was your purpose in calling, why did you call him?

A. Well, I called him to find out why Reagan was being transferred back to the County Jail.

Q. All right, and did you, did you have a conversation with Mr. Jones with reference to Reagan being returned to jail?

A. We had, we, well, I don't know how long we talked, but yes, we had a conversation about it.

Q. Did he express to you any—strike that, please—did he express to you any knowledge of what the doctor's opinion was with reference to Reagan's remaining in the hospital?

Mr. Pain: Your Honor—

Mr. Bowers: —Your Honor, I think that is clearly hearsay.

The Court: I agree.

Mr. Pain: The doctor can testify to that if he wants to bring him as a witness for that, I think.

The Court: Well, I, I believe that he [85] could testify as to whether or not Mr. Jones had any personal knowledge of what the doctor might have said. Isn't that what you are asking him?

Mr. De Anda: Yes, this would be for, not the truth, Judge, but to show they did have knowledge, whether it was correct or not, of the doctor's feelings about it because this is based on one of the allegations of negligence that we have, that we have here.

Mr. Bowers: For that limited purpose, we have no objections to it—

The Court: —I think—

Mr. Bowers: —but to prove the doctor's opinion, it is not admissible.

The Court: I know, it does not go to prove the doctor's opinion itself, but that they had knowledge that the doctor had expressed an opinion.

Mr. De Anda: Yes, sir.

The Court: And I will admit it for that purpose.

By Mr. De Anda:

Q. Did, did, in the course of your conversation, [86] did Mr. Jones indicate to you the feelings of

the doctors involved with reference to Logue's being removed from the hospital?

A. Well, that morning, in my presence, Mr. Bowers told Mr. Jones the results or the substance, or the effect of his conversation or investigation with the doctor.

Q. All right.

A. So Mr. Jones and I, late that afternoon, did not go into, to my recollection, as to what the psychiatrist had said. We did have, make reference to, have a conversation about a doctor.

Q. All right.

A. We talked about the information that I knew he had gotten that morning in my presence, and Mr. Jones' response to it was that, that the psychiatrist was, was not, that they were in this, that he was in this position, that he was not bound by and could not keep the man in the hospital based on the psychiatrist's evaluation because that was not a government doctor, he had not been appointed or applied to by the government to evaluate Reagan Logue's condition, and that they had to rely on the medical doctor, that if the medical doctor—in other words, if his [87] physical condition was such that he could be transferred to the jail, then they were going to move him to the jail and it would be up to Springfield to evaluate or somebody to be appointed.

Q. All right, now at the conclusion of that conversation, or did you learn what Mr. Jones had decided to do with reference to Reagan Logue?

A. Well, Mr. Jones informed me that it wasn't his decision; that he had had his orders from Houston. Now I believe—well, from Mr. Slocumb in



Houston, he had told him to transfer the boy back to the County Jail.

Q. All right.

A. And that he, Mr. Jones, had no, there was nothing he could do about it, he was acting upon his orders, and he had transmitted those orders to Mr. Bowers and that was why he was being taken back.

Q. All right, is that the last conversation that you had either with Mr. Jones or Mr. Bowers with reference to Logue's, with reference to Reagan's being transferred back to the County Jail?

A. Well, in that same conversation, we talked about [88] when Reagan would be transported to Springfield.

Q. All right, was that the last one?

A. And also about what precautions were being taken at the jail.

Q. All right, and was that the last conversation that you had with him?

A. Yes. Now I tried to contact Mr. Schorre either Friday night or Saturday morning, but he was still out of town.

Q. All right, the following day, and prior to the time that you found out about Reagan's death, did you have any further conversations with, in this regard, with anyone connected with the government?

A. I don't believe Saturday morning I did. Well, now Saturday afternoon I was called by the United States Commissioner—did you limit your question to Saturday morning?

Q. Well, all right, you were called by the Commissioner.



A. Just to be informed as to the death of Reagan.

Q. Oh, all right.

Mr. De Anda: We will pass the witness, Your Honor.

[89] CROSS EXAMINATION

By Mr. Pain:

Q. Mr. Foster, you indicated that you represented Reagan Logue on at least one occasion and probably on two occasions, is that correct?

A. Well, actually just on the, on the one occasion when he was indicted, and an indictment was returned from, from the Western District, the Austin Division.

Q. Did you consider yourself as being Reagan Logue's attorney as the result of the arrest of May the 22nd, 1968?

A. Yes, I did.

Q. So then that would have been two definite occasions that you would represent, or would have represented Reagan Logue, is that correct?

A. By occasions, you mean two separate criminal charges?

Q. Yes, sir.

A. Yes, sir.

Q. I, I think that you testified earlier that you more or less specialized in criminal law, is that correct?

A. I don't know whether I am specialized, but I [90] have limited my actual trial work to, for the greater part, to criminal cases.

Q. As far as your preference is concerned, you prefer the criminal type work, is that correct?

A. Yes, sir.

Q. What is your ordinary fee for, to represent a client in a criminal charge?

Mr. De Anda: Your Honor, I'm going to object to that as being wholly irrelevant to any issue in this case.

Mr. Pain: Now, Your Honor—

The Court: —I think —

Mr. Pain: —They have filed a suit against the government for, I think, One Hundred Thousand Dollars. Among the allegations in the Complaint is the fact that Reagan Edward Logue had he lived would have contributed quite a bit of money to the Plaintiffs herein, and I think that the fact that Reagan Edward Logue incurred expenses to these Plaintiffs would be quite relevant to those issues of damages.

The Court: I will overrule your objection.

Mr. De Anda: Judge, the Pre-Trial Order [91] is not for a Hundred Thousand Dollars.

The Court: I realize that.

Mr. De Anda: And just as I said, No. 1, No. 2, Judge, the nature of his question to this witness is what he normally charges in a criminal case, and

I think that even if it were admissible at all, it would be as to what he charged Logue to start with. No. 2, Judge, at the time of this occurrence, this young man was eighteen years old and I don't believe, as I understand the law, that he would be entitled to, his parents are not required by law to support him at that age, neither by our civil statutes nor by our criminal statutes under the Texas law, and I believe the criminal law, I believe it is sixteen years of age—

Mr. Maxwell: —Criminal is eighteen—

Mr. De Anda: —and you can be criminally liable up to the age of eighteen, and I think also in, by civil proceedings, that you are liable up to age eighteen, but after age eighteen, you are not, you don't have this responsibility. I think the [92] rule he refers to, as I understand it, are those sections where the law requires the support of a child by the parent.

The Court: I think what you are getting at is that with the background, where he has had to pay legal fees to be defended would cut down on his ability to contribute anything financially to his mother or to his father.

Mr. Pain: At least it would be some offset, Your Honor, that should be considered by the very virtue of the fact that—

Mr. De Anda: —If he's getting into the general area of damages, Judge, I think he can go into specific things about Reagan Logue, I think that is

proper, but to generally go into what he charges in criminal cases, I just don't think it is proper because, No. 1, it is not relevant and not proper on the issues mentioned, maybe on what the Court has just said, I can appreciate that, it might be, but in other words, as I understand, there is, there are under the rules of evidence, [93] under the rules of evidence I understand that he can explore definite areas insofar as Reagan Logue is concerned so the Court can evaluate the damages in the case, just generally, but these area certainly would not pertain to what he charges in the usual criminal case. Now that's what I'm getting at.

The Court: Can you relate it to just what, the work he had done up to the time of Logue's death, as to what his fees would be for those services?

Mr. Pain: All right, sir.

By Mr. Pain:

Q. In connection with your being retained as an attorney for Reagan Logue concerning the Austin charge, did you contact his father concerning this, or did his father contact you?

A. His father first contacted me.

Q. And about when was this, do you recall?

A. Well—

Q. —I will rephrase the question—was it after the indictment?

A. It was after the indictment and probably a week before the arraignment or—

[94] Q. —And the father contacted you concerning the representation of his son, Reagan Logue?

A. Right.

Q. Did you discuss a fee at that time?

A. Yes, I am sure we discussed a fee. Do you want—

Q. —Do you recall the amount of that fee?

A. I don't believe that, that I'd ever, before we went up there for the arraignment, I don't believe that, that we had ever reached any ultimate agreement concerning the final fee.

Q. Then is it your testimony that you don't have any recollection as to the fee that was going to be charged for representing Logue in this ultimate proceeding, is that correct?

A. No. I, I had, had explained to Mr. Logue what my customary fee would be, and in a Federal case involving these types of charges.

Q. What is that customary fee?

A. Well, for the past three or four years, I haven't, I have tried to set a minimum fee of Thirty-five Hundred Dollars. I haven't always gotten that money, but that has generally been my minimum fee.

Q. So even though you may not recall specifically [95] discussing that with Mr. Logue, bearing in mind the fact that that is what you customarily charged, in all likelihood, then, you would have mentioned that Thirty-five Hundred Dollar price to Mr. Logue, is that correct?

A. I probably told him that that would be my normal fee, but when we talked about this entire situation concerning Reagan—

Q. —This entire situation being what?

A. Well, being that the case was pending in Austin,

that there were two indictments, as I recall, and multiple counts and multiple defendants, and I wasn't in a position, I didn't want to set a fee until after I had had an opportunity to talk to the U. S., the United States Attorney in San Antonio, and that if we plead, entered a plea, in other words, if we didn't have to go up there and try that kind of a case, there were some conspiracy counts and things, that my fee, that my fee would probably be about a Thousand Dollars minimum.

Q. So would it be as accurate as we can get it right now to say that you probably quoted Mr. Logue a fee of Thirty-five Hundred Dollars for trial, and a Thousand Dollars for a plea of [96] guilty, is that correct?

A. No, I may not have made it clear. I think that, I am sure I told Mr. Logue that that was the customary, you know, that would be my customary fee, but he, I never did tell Orval Logue that the fee would be anything like Thirty-five Hundred Dollars. We never did discuss the trial fee, because we never did get to the trial, to, to that decision that we were going to have to try the case.

Q. Did you mention a Thousand Dollar fee to him for a plea of guilty?

A. I don't think I mentioned it just for the plea of guilty, Mr. Pain. Mr. Pain, I am not trying to quibble about it, but what I told him was—Mr. Logue gave me Three Hundred Dollars cash as a retainer two or three days before we went to Austin for the arraignment. And prior to the time that I had really discussed the case even by telephone with the United States Attorney, I might have checked out the date

of the arraignment or something, but at that time he, that he gave me that, and I told him, "Well, let's just wait and see what is going to happen. If we just go up there and we have the [97] arraignment, and we have to go back then for the sentencing, I probably won't charge you over a Thousand Dollars." I think that's what I told him.

Q. So the only thing that you did in connection with that Austin charge was the arraignment, is that correct?

A. Well, I had two or three conversations with the U. S. Attorney's office by telephone.

Q. Was Three Hundred Dollars the only amount of money that you got from Orval Logue?

A. That's the only cash I have ever received from Orval Logue.

Q. Did you subsequently send him any more bills in addition to the Three Hundred Dollars that you received from him?

A. No.

Q. Did you mention to, or did you have a conversation with Orval Logue concerning representing Reagan Logue in connection with the sealed indictment out of Laredo?

A. Oh, yes, we had conversations about it.

Q. And you considered yourself as the attorney for that charge as well, is that correct?

A. Right.

[98] Q. And did you mention fees?

A. No, there was never, was never any discussion concerning the Laredo case. I had discussed the Laredo case several days prior to the arrest on that sealed indictment with Reagan.



Q. You had obtained some information concerning that, is that correct?

A. Yes.

Q. Now I think that you testified that you talked to the Deputy Marshal, Gerald Jones, on the telephone on or about the morning of the 21st, excuse me, the 24th. Did you protest at that time to him about the boy's impending transfer from the hospital back to the Nueces County Jail?

A. Well, I didn't know at that time that he was going to be transferred back. In fact, our, our conversation was, was with reference to keeping him in the hospital. I don't know that Mr. Jones and I specifically talked about keeping him in the hospital, but my conversation that morning was more with reference to the Order of Commitment for Springfield.

Q. Did you know the relationship between Deputy Marshal Bowers and Deputy Marshal Jones?

[99] A. Do you mean with reference to who was in line in superiority?

Q. That is correct.

A. I didn't that morning, no.

Q. Did you make any protest to Deputy Marshal Jones concerning the boy's transfer from the hospital to the jail?

A. I did that after, that afternoon when I called him at 5:00, I did.

Q. What did you tell him?

A. Well, I told him that I, that I thought the boy ought to stay there; that I was astounded that the government was putting him back in the County Jail after he had tried to commit suicide there, and that it was against the advise of the psychiatrist.



Q. Now this was on the afternoon of the 24th?

A. This was, yes, Friday afternoon.

Q. Was this before or after the boy had been released?

A. You mean—

Q. —From the hospital to the jail.

Mr. De Anda: Now, Your Honor, that presupposes, that when did you stop beating your wife question, before or after he [100] had been released, that presupposes that the boy had been released and we're going to get into a hassle about that, as to whether or not the doctor released him. I just don't like that word floating around.

Mr. Pain: I will withdraw the word, "release" and substitute "transfer".

The Court: That's all right.

By The Witness:

A. My conversation with Mr. Jones was after Reagan had been removed from the hospital, whether he was already in jail or whether he was in the process of it, it was after I had received information he was being removed, that's when I talked to Mr. Jones again.

Q. At that time, that you made this protest to Deputy Marshal Jones, were you aware of any conversation, if any occurred, between Deputy Marshal Bowers and the doctor again?

A. Only what Mr. Bowers had told me that morning that had occurred.

Q. Now I believe you testified that Mr. Bowers told you that he had talked to a doctor concerning the boy's stay in the hospital, is that correct?

A. He had either talked to the doctor Friday [101] morning or had gone to see the doctor.

Q. What doctor?

A. Gwin is my memory of it.

Q. How do you know it was Dr. Gwin?

A. Well, that's my memory of what Mr. Bowers, who Mr. Bowers told me he talked to.

Q. Could it have been another doctor?

A. I don't believe so, Mr. Pain. I believe he, he, well—

Q. —Could he have mentioned only a doctor and not mentioned him by name and perhaps of the, because of the fact that you knew that Gwin was the doctor, you merely assumed it was Dr. Gwin that he talked to?

A. No, my specific recollection is that Mr. Bowers had some information from Dr. Gwin. Now it could be that he also had talked to another doctor.

Q. Now this, you got this on the morning of the 24th, is that correct?

A. Yes, sir.

Q. At the time that you learned about the boy's transfer from the hospital to the jail, were you aware of any action that Dr. Gwin may have taken in connection with that transfer?

[102] A. No, sir, I wasn't.

Q. Now you had no contact with Dr. Gwin until after the boy's death, is that correct?

A. No personal contact?

Q. Yes.

A. No, sir, I didn't talk to Dr. Gwin until afterwards.

Q. Now you considered yourself Reagan's doctor, excuse me, his lawyer during the time in question, did you not?

A. Yes, sir.

Q. And as his lawyer, you have an obligation to protect him the best way you know how legally, is that correct?

A. Well, I hope so.

Q. To protect his rights?

A. Yes.

Q. And that would include protecting his well being, would it not, in your opinion, if in your opinion you thought his well being was being jeopardized, it would be your duty to protect him as your client, would that not be true?

A. Oh, I think as another human being you would, but this particular boy, I had become pretty friendly with him and he had come by the office [103] while this pre-sentencing investigation was going on, and I, and I would say I was, I had some particular concern in this particular case, perhaps more so than the normal run of my client relationship.

Q. But irrespective of any personal relationship that may have entered, may have interjected itself in this particular case, you as a lawyer would have had a duty to your client to try to protect him, protect his well being in a situation like this to the best of your ability, would you not, as a lawyer?

A. I would think so, yes, sir.

Q. Did you have a fear that Reagan Logue might kill himself?

A. Now, do you mean if he were taken out of the hospital and put back in the jail? Yes, sir, I did.

Q. Did you communicate this fear to anyone?

A. Well, I talked about it with Mr. Bowers and I talked about it with Mr. Jones. And I talked about it with Mr. Vaught, and that was the whole topic of the conversation between the Logue family and myself throughout Friday.

Q. Did you specifically warn them that you were in [104] fear that the boy might kill himself?

A. I don't know that I specifically expressed that opinion to them.

Q. Did you talk to Judge Connally about this fear for Reagan Logue?

A. I don't believe I talked to Judge Connally personally about this matter at all.

Q. My recollection is that Judge Garza was sitting here in this Courtroom right here at that time, or, or at least in this Courthouse, did you talk to Judge Garza at any time about your fear for the boy in connection with being transferred from the hospital to the jail?

A. We came over here to see Judge Garza about an Order of Commitment, yes, we came to the Judge's Chambers that after, that Thursday afternoon, I believe, before his first attempt, and after my conversation with him Thursday morning about letting me proceed with the commitment type Motion.

Q. That was Thursday morning?

A. Yes, sir.

Q. Before the boy had cut himself?

A. Yes, sir.

Q. At that time did you have any fear that the [105] boy might kill himself if he remained in jail?

A. I don't remember that specific fear, but I know, I knew that he was very despondent and I was very concerned over his depressive attitude about being in jail.

Q. Other than discussing the possible commitment to Judge Garza, did you indicate to Judge Garza that you felt that the boy might hurt himself while in the County Jail?

A. I personally didn't talk to Judge Garza on this case at all because it was Judge Connally's case, and I had been over a road like that once before.

Q. Then you didn't discuss this case with Judge Garza at all, is that correct?

A. Personally, I don't believe I did.

Q. Now if you had been in real fear of the boy hurting himself while in the jail, you could have communicated this fear to Judge Connally, could you not?

A. To Judge Connally?

Q. Yes, sir.

A. Do you mean after he was removed back to the County Jail?

Q. Well, at any time that you felt like that the [106] boy might really hurt himself or kill himself and you had a fear of that, you could have communicated that to Judge Connally, couldn't you?

A. I was ready to go to Laredo Friday morning and present myself to Judge Connally.

Q. That was on the Order of Commitment, wasn't it?

A. Primarily, yes, but I am sure that Judge Connally would have asked a lot, you know, he would have wanted to know the entire situation on this; this was a young boy.

Q. But you never did talk to Judge Connally, did you?

A. No, sir.

Q. And you didn't talk to Judge Garza about this boy, either, did you?

A. I didn't personally talk to him, to Judge Garza, but Judge Garza wouldn't have taken any action on this matter anyway. Well, let, let me rephrase that—I don't mean that in a derogatory manner toward Judge Garza; he might have taken some action with reference to calling the Judge in whose Court this was pending, but he wouldn't have taken any affirmative action without contacting the other Judge.

[107] Q. Do you feel like that if you had called Judge Connally and told him that you had a real fear that if Logue were transferred from the hospital to the jail that he would kill himself, do you feel like Judge Connally would have done nothing?

Mr. De Anda: Now, Your Honor—

The Witness: —No, sir—

Mr. De Anda: —I object to that question as being highly speculative as to what he feels the Judge would have done if he would have asked him certain things—

Mr. Pain: —Well, Your Honor—

Mr. De Anda: —That's that's entirely improper.

The Court: Well, he didn't talk to him and I believe that I will sustain the objection, he didn't, you didn't make an effort to talk to Judge Connally at all, did you?

The Witness: No, sir, I didn't.

The Court: All right.

By Mr. Pain:

Q. Now you were the attorney of record in this lawsuit at one time, were you not?

A. Yes, sir.

[108] Q. But you are not now, is that correct?

A. No, sir.

Q. Now the original suit was for a Hundred Thousand Dollars, is that correct, on the, on the Original Complaint?

Mr. De Anda: Your Honor, that is wholly irrelevant to any issue in this case. I don't see—

Mr. Pain: —Well, Your Honor, I think—

The Court: —I will let him go ahead with his questions and see where he is going.

By Mr. Pain:

Q. Now—

A. —I don't know that I know, Mr. Pain. Mr. Edwards, and/or his firm, drew the pleadings, and I don't specifically recall what your—that could be correct.

Q. So under the terms of the Original Complaint, had the Court granted the amount prayed for by the Plaintiffs, you would have stood to gain some Twelve Thousand, Five Hundred Dollars, is that correct?

Mr. De Anda: Now, Your Honor, I'm going to again

object to this line of questioning; No. 1, because he, because as Mr. Pain, I [109] have mentioned, Mr. Pain, as I had advised the Court, that Mr. Foster has no interest in this case and so the question is irrelevant. In the extreme, I don't see any materiality to it whatsoever, whether he had an interest or not. But as a matter of fact, he could not have an interest because before any judgment would have been entered, I am sure that their, that because of the fact that he was a witness, I think that under the Cannons, he would, he could not have, I think it would be a violation of the Cannons for him to have an interest.

Mr. Pain: It is my information that he does have an interest in this lawsuit.

Mr. De Anda: When we started out, as I explained to the Court, when we checked it out, we felt that it would not be proper for Mr. Foster to have an interest, we went over it with Mr. Foster, and Mr. Foster has no interest in the case at the present time. I will be glad for him to ask him while he is on the witness stand, but I just want to cut this thing short.

[110] Mr. Pain: May I inquire into his interest?

The Court: Just a specific question, if he does have an interest of any kind in this lawsuit.

By Mr. Pain:

Q. Do you have any interest of any kind in this lawsuit?



A. Monetarily?

Q. Yes, sir.

A. No, I do not expect to receive one dime out of any moneys that might be recovered in this lawsuit.

The Court: I think that's enough.

Mr. Pain: Well, may I go back and ask him a little bit more about this interest, if I may—

The Court: —Well, Mr. De Anda has precisely stated to the Court that he does not have an interest, he testified he doesn't have, and I think that's as far as we need to go.

Mr. Pain: We have no further questions at this time, Your Honor.

[111] REDIRECT EXAMINATION

By Mr. De Anda:

Q. Mr. Foster, I want to, to touch on some matters that were touched upon by cross examination. The first thing, with reference to your conversations with Mr. Jones as to whether or not you expressed to Mr. Jones your fear that Reagan Logue might commit suicide, and you indicated, as I recall your testimony on cross examination, that you do not recall or you did not specifically mention this to him. Why did you not mention this to Mr. Jones?

A. Well, when I answered that question, I said that I didn't recall specifically conveying that direct fear in those words. There is not any doubt that I

expressed to Mr. Jones my concern over Reagan Logue's safety if he was taken back to the County Jail out of the hospital.

Q. Was that the tenor of all of these conversations?

A. That's right, there wasn't any doubt about how I felt about that.

Q. All right, now were you aware, I believe you have testified earlier, that you were aware that Mr. Jones had been advised of the opinions [112] of the doctors—

A. —He was—

Q. —concerning Reagan Logue and of his suicidal tendencies?

A. Mr. Bowers informed him in my presence that morning about that.

Q. And could your opinion have, have given any more weight, would your opinion have carried any more weight with Mr. Jones than those of the psychiatrist and the doctors that treated Reagan Logue?

A. I doubt it at all, but, but that wasn't the nature of our conversations that afternoon. It didn't have anything to do with my opinions, it was a matter of concern as, as, and as I told him, that the family would pay, in other words, the boy was not in there being treated, or we weren't asking to have him treated at the government's expense, we weren't asking him to be committed there as a welfare case, the family was willing to pay to keep him in the hospital, and to even pay guards, if necessary, to keep him in the hospital. In other words, I expressed to him that if, if, if the government would leave him in the hospital, it would [113] not be necessarily

at the government's expense, so far as we were concerned, we would pay for that.

Q. All right, now there was inquiry about, concerning your failure to contact Judge Connally personally, and, and express any fear that you might have had about Reagan's suicidal tendencies, why did you not make any such effort, Mr. Foster, what happened either before or after that, that might influence you one way or the other in never making any further efforts to see Judge Connally?

A. Well, when Judge, when I was informed that he had signed this Order of Commitment, I assumed that Judge Connally had been informed of the entire situation concerning what had occurred up here. Now you ask me why I didn't contact him that night —

Q. —That was your answer, in other words, you assumed that Judge Connally knew already—

A. —Well—

Q. —the problem?

A. I assumed that Judge Connally knew the situation at the, at the time he signed the Order committing the boy to Springfield.

Q. All right.

[114] A. When Mr. Jones and I that afternoon had that, late that evening that we had the discussion as to when he would go to Springfield, I was informed that it might be as late as Tuesday or Wednesday, that they would act on it as speedily as they could, and I then conveyed to the, to the Logues, I think I told them that we were going to see if we could get it done by Sunday or Monday because it was this staying in the, in the jail at that

time that had been Reagan's, you know, had added to his depressive situation, and I didn't call Judge Connally that night. This was right after 5:00 o'clock when I talked to Mr. Jones, and I was assured by him that he, or some Marshal had talked directly to the jail here, and that complete safety precautions would be taken and so forth, and I just didn't feel like it was the thing to do that night, to bother Judge Connally after, you know, that time of day.

Q. All right, now I don't, I don't have it clear in my own mind, maybe everybody else does, what was your purpose in coming up here when Judge Garza was here, had Judge Garza gotten in this thing somehow, why did you come up here to the [115] Courthouse, was it with reference to Reagan Logue, or did I misunderstand?

A. Well, I believe I testified that I came over here Thursday before Reagan tried to commit suicide, but when I came over here to the Federal Courthouse, it was for, well, here was, here was a Federal prisoner arrested on a Federal sealed indictment out of Laredo, he was being held with no bond, that was supposed to have been in Austin that morning, and that had expressed to me his desire to be committed psychiatrically, and who I, based on my experience, felt like needed psychiatric treatment, and I think I, my recollection is that I came over to the Federal Court that day to, to more or less feel out the situation and see if there was anything we could do immediately. That maybe I, it was probably Mr. Alamia that I talked to, I don't recall specifically talking to Judge Garza about doing anything in connection with the Reagan Logue case.

Q. Well—

A. —I—

Q. —Was it with reference to the commitment which was ultimately signed by Judge Connally [116] that you came over here?

A. Well—

Q. —That's what I'm trying to find out.

A. Right.

Q. Or what occurred or the sequence—

A. —Right—

Q. —with reference to your coming over here?

A. It was more with the commitment, more to do with, with committing him some way. Now I believe that I talked to Mr. Vaught that day because it would have been, would have been so much quicker if the Judge that was sitting here that day could have signed an Order committing him and sending him straight from the Nueces County Jail to Springfield immediately if, if his situation warranted it.

Q. All right.

A. But I never did get to that point on my trip over here.

Mr. De Anda: We pass the witness, Your Honor.

Mr. Pain: I have a couple more questions, Your Honor, if I may.

[117]      RECROSS EXAMINATION

By Mr. Pain:

Q. During the conversation that you testified about, that some of, some of the conversation was,

whereby you and Deputy Marshal Bowers were on the telephone talking to Deputy Marshal Jones, do you recall any conversation to the effect that Deputy Marshal Bowers was not to get the boy out of the hospital without a doctor's release?

A. I recall that, that Mr. Bowers wasn't going to do, he was going to leave the boy right where he was until Mr. Jones took the matter up with the Court and advised Mr. Bowers what to do, because Mr. Bowers talked to him about, should he try to find some guards, and there was some conversation between them about whether a guard should be on duty at all times at the hospital, and there wasn't any doubt that the effect, or the end of that conversation was that the boy would stay right there until Mr. Jones got back in touch with Mr. Bowers.

Q. But do you recall any conversation at this time concerning not transferring the boy from the [118] hospital to the jail until there was a doctor's release, do you recall anything to that effect?

A. I don't recall it, but I don't deny that it occurred.

Q. Now do you realize, I suppose, that in connection with the Marshals' actions, they acted under the Court and according to Court Orders, you realize that, of course, as a practicing lawyer in Federal Court?

A. Well, I realize that they don't.

Q. They do not operate under the Court's Order, is that correct?

A. Not at all times. In other words, it is my understanding, as a licensed attorney, in the Federal system, for instance, that if Judge Cox sentenced a

man here, and his sentence necessarily transfers that prisoner to, to the custody of the Attorney General, and from that point on, His Honor would have nothing to do about how the Marshal handled that prisoner unless you went back to him with a Habeas Corpus Petition for reduction or release, or something, how he gets transported around is of no, it is not by the authority of the Court, but it is by the Marshal.

[119] Q. But you do know that if an Order is executed by a Court to protect the welfare of a prisoner, then a Marshal will obey that Order?

Mr. De Anda: Your Honor, as far as getting opinions from Mr. Foster about the law, I don't see that those are material; those are all matters that the Court is fully aware of, and if not, will become fully aware of them without Mr. Foster's opinion.

Mr. Pain: Well, Your Honor, we are—

Mr. De Anda: —As to the function of the Marshal and the function of the Court, I don't know why we, we need Mr. Foster's opinions.

Mr. Pain: It's not so much the fact that, of what the law procedure is, but his knowledge of it, that is relevant, I think, in this particular situation, what he could have done in the situation.

Mr. De Anda: Your Honor, we are not here suing Mr. Foster, and what Mr. Foster—

The Court: —Well, I'm going to sustain the objection. That's far enough on that point.

By Mr. Pain:

[120] Q. Did you warn anyone that Reagan Edward Logue might hang himself with the bandage, with the bandage around his arm?

A. I didn't even know that Reagan Logue that day had a bandage around his arm. I did not warn anybody except conveying to Mr. Jones and Mr. Bowers, both, on that Friday, of my concern for this boy's depressive situation, mentally.

Mr. Pain: Pass the witness.

Mr. De Anda: I have no further questions of Mr. Foster, Your Honor.

The Court: Okay, we will recess until 2:00 o'clock.

The Marshal: Everyone rise, please.

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Witness Excused

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[121]

(And thereafter at 2:00 o'clock P.M., Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, and the following proceedings were had, to-wit:)

The Court: You may proceed, Mr. De Anda.



Mr. De Anda: Judge, Your Honor, I want to offer into evidence certain portions of the written deposition of Thomas C. Slocomb, Chief Deputy, United States Marshal. Would the Court like for my Co-Counsel to get on the witness chair, it might be easier—

The Court: —Either way.

Mr. De Anda: It's not going to be a long deposition.

The Court: That's the easiest way to do it.

Mr. De Anda: Your Honor, for the benefit of the Court Reporter, and for Mr. Pain, [122] I have indicated here certain parts that I did not intend to offer, and if it is permissible and helpful, I will read them into the record. I will offer all of Page 2; all of Page 3, except Interrogatory No. 10; all of Page 4, except the Interrogatory, the answer to Interrogatory No. 10; all of Page 5, 6, 7, 8, and 9; all of Page 10, except the Interrogatory No. 20. (Talking to Mr. Pain) You can copy that down.

Judge, these are the answers of Thomas C. Slocomb made in response to the Direct Interrogatories propounded to him by the Government. And this was done on January the 21st, 1971, in Houston, and we do not cross the Interrogatories.

The Court: All right.

[123] DEPOSITION OF THOMAS C. SLOCOMB,

the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to the Direct Interrogatories, as follows:

DIRECT INTERROGATORIES

By Mr. De Anda:

Q. Interrogatory No. 1—Please state your name.

A. (The following answers to the Interrogatories were read by Mr. Phil Maxwell and are as follows:) Thomas C. Slocomb.

Q. By whom are you employed?

A. The U. S. Marshal's Service, United States Department of Justice.

Q. How long have you been so employed?

A. Thirty-two years.

Q. In what capacity are you employed?

A. Chief Deputy, U. S. Marshal.

Q. Where is your duty station in such employment?

A. Houston, Texas.

Q. How long have you been at such duty station?

A. Houston has been my duty station for the entire thirty-two years.

[124] Q. State generally your duties in connection with your employment capacity.

A. As Chief Deputy U. S. Marshal, I am second officer in charge. I am second man in administration, directing the overall operation of the District. A Chief Deputy Marshal would be considered in business as an Assistant General Manager.

Q. In what capacity were you employed during the month of May, 1968?

A. Chief Deputy U. S. Marshal.

Q. Was Reagan Edward Logue ever a Federal prisoner in Corpus Christi, Texas? If so, when and where?

A. He was. On two occasions; first, on April the 2nd, 1968, and again on May 22nd, 1968, at Corpus Christi, Texas, on both occasions.

Q. How did you first learn that Reagan Edward Logue was a Federal prisoner, and when?

A. The first arrest was so routine I do not recall how or when I learned of it. The arrest of May 22nd, 1968, as I recall, was reported to me by Deputy Bowers on that date by long-distance telephone.

Q. Did you receive any messages on May the 23rd, 1968, concerning Reagan Edward Logue? If so, [125] state from whom this message was received and the approximate content of such message.

A. Yes, on May the 23rd, 1968, I received a long-distance telephone call at my residence at about 6:30 P.M. from the United States Probation Officer, Howard Vaught, advising me that he, Mr. Vaught, was at the Nueces County Jail, Corpus Christi. That young Logue had inflicted wounds to himself on one of his arms and that the jail authorities had transferred the boy to Memorial Hospital where he was committed for treatment. I informed Mr. Vaught that our resident Deputy, Mr. Schorre, was away from Corpus Christi in travel status; that Deputy Bowers was then in route from Houston to Corpus Christi and would be on hand 8:00 A.M., on May 24th, 1968, to attend to the duties of the Corpus Christi office.

I requested Mr. Vaught to ask the jailer to place guards at the hospital over the Defendant around the clock.

Q. When did you—excuse me—did you receive or originate any subsequent telephone messages in connection with Reagan Edward Logue? If you answer the preceding sentence—if your answer to the preceding sentence was in the affirmative [126] please state, to the best of your knowledge and recollection, the times you sent or received such messages, the person to whom or from whom such messages were sent, and the approximate content of such messages.

A. Yes. On May the 24th, 1968, at approximately 11:30 A.M., I received a telephone call from Deputy Bowers at Corpus Christi, advising that a psychiatrist, as a friend to the family, had visited the patient. The psychiatrist informed that the boy was withdrawing from the use of L.S.D.; that the patient had suicidal tendencies, and the psychiatrist recommended to Deputy Bowers that we leave the boy in the hospital with the guards until such time as he could commit him to a Federal Institution. I questioned Deputy Bowers as to whether or not the Nueces County Jail could take care of the boy when he was able to be discharged from the hospital and until such time as we could commit him to an institution. Deputy Bowers further advised that the Defendant's attorney was in communication with Assistant United States Attorney Blask at Laredo, Texas, concerning the possibility of committing Logue to an [127] institution under Section 4244 Title 28 U. S. Code. I instructed Deputy Bowers to stand by until he received further instructions from me or from supervisory Deputy

Marshal, Gerald Jones. Deputy Jones was attending Court in Laredo, Texas. On the same date, May the 24th, 1968, approximately 1:00 P.M., I received a telephone call or had a telephone conversation with Deputy Jones at Laredo, Texas, advising that Court Order to commit subject under Section 4244 was in the process of being issued and that the same would be mailed to the Houston office that date. I questioned Deputy Jones as to the ability of the Nueces County Jail to hold custody of Logue under his present condition until we could get him committed under Section 4244. Deputy Jones concurred that the jail was suitable. He advised me he had called the jailer, Mr. Tom Lowrance, as a precautionary measure, and requested that they prepare a cell, cleaning it out so that the boy could not possibly again inflict wounds upon himself. Deputy Jones further advised me he had requested the jailer to place a couple of trustees in or nearby the cell to observe the boy. Deputy [128] Jones called Deputy Bowers in Corpus Christi and instructed Bowers to recommit the boy to the jail upon his release from the hospital. Again, on May the 24th, 1968, at approximately 4:30 P.M., I received a telephone call from Deputy Bowers at Corpus Christi advising that he had recommitted the boy to the Nueces County Jail; that the cell had been stripped of all objects that could be used for self-inflicted wounds. He further advised that the boy was placed in a cell convenient for observation by the jail authorities and that the boy had been divested of all clothing with the exception of pajama shorts.

Q. Have you ever had experiences in connection

with the committing of Federal prisoners under 18 U.S.C., Section 4244?

A. Yes, I have.

Q. If the answer to the preceding Interrogatory was in the affirmative, please state the procedure that your office performs and how it performs such procedures when a Federal prisoner is to be committed under 18 U.S.C., Section 4244.

A. When the Court Order under Section 4244 is received by our office, in an effort to expedite, [129] we telephone the case management section of the Bureau of Prisons, Washington, D. C., for a designation. Even though the Court Order may set out a certain institution for commitment, we are obliged to get a designation from the Bureau of Prisons, and they, in turn, notify the institution of the 4244 commitment. In routine cases, we then mail a card to our Prisoner Coordination Office, Washington, D. C., advising them the subject is ready for transfer from our District to the institution. Prisoner Coordination then handles the matter of transfer. That is, they say who in the U. S. Marshal's Service will make the commitment to the institution. In most cases, the commitment under 4244 will be made by the originating District as they try to expedite these type of commitments. However, should there be a Deputy Marshal coming through, or near our way, in route to or in the direction of the institution designated for our 4244 commitment, and provided he has a vacant seat, Prisoner Coordination will have that car come by and pick up from us, transfer, and commit the patient to the institution. This is a measure of economy and good [130] business.

Q. Ordinarily, how long of a period of time does it take from the time a Federal Judge executes a Commitment Order under 18 U.S.C., Section 4244, until the Federal prisoner is actually committed to the mental institution?

A. Ordinarily, eight to fifteen or sixteen days.

Q. Can the period of time mentioned in the above be expedited to a shorter period of time in certain circumstances?

A. Yes, under certain circumstances, especially in emergency cases involving serious illness.

Q. Were you aware of any impending Order of Commitment under 18 U.S.C., Section 4244, in connection with Reagan Edward Logue during May of 1968?

A. Yes, as stated above, I was informed during the afternoon of May 24th, 1968, that such Order was in the process of being prepared, submitted to the Court, and would be mailed to Houston that day.

Q. State how you became aware of such impending Order.

A. I was informed by Supervisory Deputy U. S. Marshal Jones via long-distance telephone that [131] the 4244 Order was in process.

Q. Had you received the Order of Commitment as above mentioned prior to the death of Reagan Edward Logue, how long, to the best of your ability to estimate, would it have taken before Reagan Edward Logue would have been committed to a mental institution?

A. If we had had the Court's Order in hand and the patient in hand, available for immediate transfer, I think that by making long-distance telephone re-

quests to the Washington offices, in this case we could have commenced the trip possibly within twenty-four hours after making the calls. Actual commitment date to the institution would depend upon distance and travel time.

Q. Have you made any written statements or statement in connection with the incidents surrounding Reagan Edward Logue that occurred in May, 1968?

A. Yes. Statement was made to the Federal Bureau of Investigation, Houston, Texas, and a statement was forwarded to the Executive Office of U. S. Marshals, Washington, D. C., which was requested by the Civil Division of the Attorney [132] General's Office.

Q. Please submit a copy of such written report to the officer taking this deposition.

A. We do not have a copy of the statement made to the F.B.I. I hand you a copy of the statement furnished the Executive Office of U. S. Marshals, Washington, D. C.

Mr. De Anda: Your Honor, in reference to the last Interrogatory, that completes the portions of the Interrogatories that I wish to offer, but I really don't, couldn't understand whether this was a full, whether he made two copies of one statement, or whether he made two statements, do you know, George?

Mr. Pain: Apparently there were two statements; one to the F.B.I., and this other one here, and this is the one that he submitted. (Indicating)

Mr. De Anda: Do you have a copy of the other one?



Mr. Pain: I don't know. Do you want it?

Mr. De Anda: I may since you asked about it in this Interrogatory. I think, Judge, that we are entitled to look at it even, [133] even if, though the witness didn't have it, if Counsel has it.

Mr. Pain: Your Honor, I will make a search of my file; if I have that statement, the statement that he made to the F.B.I. agent, I will give it to him.

The Court: All right.

Mr. Pain: May I just do that sometime today?

Mr. De Anda: There's no rush on that.

The Court: This evening or tomorrow.

Mr. Pain: Your Honor, perhaps this isn't the proper time to bring it up, but I would like to inquire of the Court, or first of all before I inquire of the Court—there was one question, there were two questions omitted by Mr. De Anda. One question I am not concerned with, the other question I am concerned with. It's on Page 10 of the deposition, starting at Line 3, that he did not read, and I would like to have that read and the answer made for the purposes of the record, and apparently Mr. De Anda is going to object to that, that's the reason he did [134] not put it in, am I correct in that?

Mr. De Anda: There were two reasons, Your Honor. Yes, I would intend to object to it; let me read the

Interrogatory to you and the Court can pass on it. "During the time in question, did you intend to expedite the committing of Reagan Edward Logue in and when your office received the Order of Commitment under 18 U.S.C., Section 4244?"

The answer to that question I have no objection to, which is as follows: "Yes, I intended to make every possible effort to expedite the matter. However, before we can commence we should have the Court's Order in hand and we must have custody of the subject. In other words, in this case, this young man was in the hospital."

Well, the reason, Judge, that I didn't offer that part is, that he infers in his answer that when the man is in the hospital he is not in the Marshal's custody, and I did not want to be bound by it, and I don't agree with it, and still don't [135] agree with it, and I think that even though, and other evidence will show he was quite clearly in the Marshal's custody in the hospital, and—

The Court: —Well—

Mr. De Anda: —I just—so I didn't, I didn't want to be bound by that, and that was the reason I didn't want to read that part, although that is responsive to the question. But even then he goes on to say—"We in Houston did not know the extent of his illness or how long he would be in the hospital. We must have the Defendant available for transfer and we want the attending physician to advise us whether or not the Defendant is physically able to travel."

Then he goes on to, to say, and I don't want to be bound by this, but I want to explain the answer to the Court, he talks about the boy being released from the hospital and he goes into other matters which are wholly unrelated to the Interrogatory that was asked him. And, and I don't believe, I don't believe, for that reason, for that [136] reason it is inadmissible. Now this part might be admissible except I don't feel like I want to be bound by it, because I don't feel, and didn't feel it was an accurate and correct statement.

Mr. Pain: If he is worried about being bound by it, I will accept that portion as being my testimony in direct, then.

Mr. De Anda: I anticipated—

The Court: I was going to suggest, why don't you go ahead and anything that he didn't put in evidence himself in that deposition, that you want to put in, then just ask it as though it were cross examination, you may go ahead and do that.

Mr. Pain: All right, may I go ahead and do that now?

Mr. De Anda: Yes, when you conclude I am going to make my objections just as if an ordinary witness were testifying.

The Court: Yes, yes, that's right.

Mr. Pain: And so the record won't be too disjointed,

I will start over at this particular point concerning the question and answer we were just discussing. It [137] starts on Page 10, at Line 3.

“Question—During the time in question, did you intend to expedite the committing of Reagan Edward Logue in and when your office received the Order of Commitment under 18 U.S.C., Section 4244?

Answer—Yes. I intended to make every possible effort to expedite the matter; however, before we can commence we should have the Court's Order in hand and we must have custody of the subject. In other words, in this case, this young man was in the hospital. We, in Houston, did not know the extent of the illness or how long he would be in the hospital. We must have the Defendant available for transfer and we want the attending physician to advise us whether or not the Defendant is physically able to travel. I learned that the boy had been released from the hospital around 4:30 P.M., on Friday, May the 24th, 1968, and recommitted to the Nueces County Jail. The hour of the day was so late that the Washington offices were closed, they being one hour [138] ahead of us, making it impossible for us to commence any telephoning.”

And that constituted the question and answer.

The Court: All right.

Mr. De Anda: All right, Your Honor, I don't believe it will be necessary for me to repeat the objections that I made. The Court has heard them, but I would add that the only part I am not objecting to is that

portion which says, "Yes, I intended to make every possible effort to expedite the matter." The remainder of the answer is not responsive to the question that was asked, which is simply whether or not he intended to expedite the committing of Reagan Edward Logue when he received the Order of Commitment. And as to, also there is the further objection, Your Honor, to this business about the release, that he learned that the boy had been released from the hospital, in that we don't know from that answer his source, whether it is based on hearsay, speculation, or who he talked to, [139] or who he did not talk to, other than it might be related to what has already been testified to, that there was a telephone conversation. But I believe that we excluded the business about the release and that was my, that was my objection to that particular part.

The Court: Well, just to that particular part, where you used the word, "release", well, I will sustain the objection, but otherwise, I'm going to let it in. It is the same situation that we talked about earlier this morning when you changed the word, "release", to "transfer", and that's the reason I am—

Mr. Pain: —Your Honor, in connection with that, perhaps rather than rule at this time, could you carry that particular issue along with the case because there is further evidence in this case which may, could very well validly show a release.

Mr. De Anda: Your Honor, rather than carry it along, let's put the burden on him to reintroduce it at such time as [140] it becomes admissible.

The Court: I think we've got to be consistent at this point as far as release is concerned. If you establish that there was actually a release, then, this is just going to be repetition anyway, so we will just, I will sustain the objection to the answer only with regard to the use of the word, "release".

Mr. De Anda: All right, sir.

Mr. Bowers: Perhaps we could limit the tender with the term, "release", to, to the knowledge of Mr. Slocomb's mind at that time and not as an issue of whether or not there was one.

The Court: The word, "release", to me is a legal term and, and it implies certain legal aspects that the word, "transfer", does not, and I think it is a conclusion that we are dealing with. And that's the reason that I have, I sustained the objection earlier and I sustain it at, at this time. I may change my mind, if I do, why I will, I will put it back in, but—

[141] Mr. Bowers: —Yes, sir.

The Court: —but at this time, I will sustain the objection.

(Close of Deposition)

Mr. De Anda: Your Honor, I have previously marked for identification, or the Clerk has, Plaintiff's Exhibit No. 1, which is the hospital record of Memorial Hospital, at Memorial Medical Center for the

hospitalization of Reagan Logue, showing an admission on May the 23rd, 1968, and a dismissal on May the 24th, 1968, covering that period of hospitalization. And I now offer it into evidence, those medical records, Judge.

Mr. Pain: We have no objections to them.

The Court: All right, that will be admitted.

Mr. De Anda: Judge, I might point out to the Court, if I might, the only, the only significant, well, it is all significant, I suppose, but the first three pages of the records may aid the Court when we offer Dr. White's testimony, [142] which I intend to offer next.

The Court: All right.

Mr. De Anda: Your Honor, I'll have Mr. Maxwell make the responses of Dr. White.

The Court: All right.

Mr. De Anda: And I now offer into evidence, Judge, the deposition of Dr. James H. White, which was taken at the University of Texas Medical Branch, John Sealy Hospital in Galveston, on April the 23rd of 1970.

The Court: Okay, you may proceed.

[143] DEPOSITION OF DR. JAMES H. WHITE

the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. De Anda:

Q. This is Direct Examination, Your Honor—  
The Court: All right.

By Mr. De Anda:

Q. Doctor, would you please state your name?

A. Dr. James H. White.

Q. Doctor, where do you reside at the present time?

A. Galveston, Texas.

Q. And what is your profession?

A. I am a physician and I am a Fellow in Child Psychiatry.

Q. Are you licensed to practice medicine in the State of Texas?

A. Yes, I am.

Q. And has your license been filed in the District Clerk's Office of this County for the practice [144] of medicine?

A. Yes, it has.

Q. Doctor, after the completion of your graduate studies, where did you go to school?

A. I interned at Memorial Medical Center, Corpus Christi, July 1, '67, until July 30, 1968.

Q. Where did you go to medical school?

A. The University of Texas Medical Branch in Galveston.



Q. And you completed your medical school when?

A. On June the 14th, 1967.

Q. And what sort of degree did you obtain?

A. Doctor of Medicine.

Q. And then following your graduation from medical school, you interned at Corpus Christi, at the Medical Center?

A. Yes, sir.

Q. All right, sir, after you completed your internship, then what did you do?

A. I returned here to the University Medical Branch and did one year of residency in the Department of Psychiatry. Following that, I was given a Fellowship in Child Psychology here at the University. For a period of two months, November and December, 1969, I was Chief of the State [145] Hospital of Psychiatry.

Q. What are you doing at the present time, Doctor?

A. I am a Fellow in Child Psychiatry.

Q. Here at the University of Texas Medical Branch?

A. Yes, that's right.

Q. I take it, then, you are specializing and will specialize in psychology?

A. Child and adolescent psychiatry.

Q. What ages would that encompass?

A. Up to approximately the age twenty.

Q. Doctor, have you ever had occasion to treat or see Reagan Logue?

A. I saw him in the emergency room at Memorial Medical Center in Corpus Christi.

Q. And when was that, Doctor?

A. May 23rd, 1968.

Q. And what was the occasion, and where was it that you saw him?

A. He was brought into the emergency room from the jail after having inflicted a wound in his left arm.

Q. What was the nature of the wound, as to its severity and as to the condition of the patient speaking from a physical standpoint?

A. A two centimeter laceration of the left [146] antecubital vein.

Q. Would you describe the wound as a serious wound?

A. It was bleeding profusely because of the involvement in the vein. However, it was treated in the emergency room with sutures.

Q. Then was there anything else unusual about Reagan Logue? Did you make any type of diagnosis apart from the laceration?

A. The patient was acutely psychotic.

Q. Doctor, by being acutely psychotic, can you, in layman's terms, describe or define that phrase for us?

A. He was mentally ill at the time; insane, if you wish. He obviously could not differentiate reality; he was actively hallucinating at the time.

Q. And by actively hallucinating, what do you mean?

A. He was having visions, he was seeing such things as God, Jesus, and Angels.

Q. In other words, Doctor, would it be fair to say when you saw him on May the 23rd, that he was crazy, in the lay sense, someone completely out of touch with normalcy?

A. He was.

Q. Having made the diagnosis and having made, [147] having examined him, did you also treat him for his cut?

A. His cut was sutured and he was given a tetanus toxoid shot.

Q. Then what was done to him?

A. He was given intramuscular thorazine, which is a tranquilizer, and which is the treatment of choice in an emergency situation for someone who is actually psychotic. He was then hospitalized in a locked room, in an enclosed room, and was continued on doses of thorazine, large doses, every six hours.

Q. What was the purpose of this medication?

A. This medication is the specific treatment for someone who is actively psychotic, in order to calm them. A person who is psychotic as he was, and has made one suicide attempt is, in my opinion, likely to make another one. With proper medication this often can be prevented.

Q. So that was the purpose of medication?

A. Yes.

Q. And can you describe the seclusion room you mentioned; what kind of room was it?

A. It was, at the Memorial Medical Center, they have a room with a steel door that was locked. [148] There are heavy detention screens on the windows, and there were no protruding objects in the room. It was a completely bare room with a mattress on the floor.

Q. And what would be the purpose of having a completely bare room with no protruding objects?

A. It removes all possibilities of a patient harming himself, or as nearly as possible to removing them.

Q. Yes, sir. Insofar as Reagan Logue's ability to stand or move around, or to do things, did this medication have any effect on his ability to do these things?

A. The medication is somewhat sedating; once a person becomes acclimated to it, it does not interfere with their activities.

Q. I see. After you saw him in the emergency room and made your diagnosis, Doctor, at whose, by whose authority was he admitted into the hospital?

A. At that time he was admitted by the intern at Memorial on duty. We must admit patients jointly with the Staff Physician, and I contacted Dr. Shannon Gwin, who is the Staff Psychiatrist at Memorial, and he was admitted.

[149] Q. While he was there, and following this admission, did anyone from any law enforcement agency stay there?

A. No, not that I know of.

Q. All right, did you, after he was admitted, Dr. White, did you have occasion to discuss his condition or the course of treatment or anything else pertaining to Reagan Logue with any member of the U. S. Marshal's Office?

A. I admitted the patient to the hospital around 6:30 P.M. The next morning, at approximately 8:00 A.M., after I had got off of the emergency room duty, I was preparing to leave town and the patient would be left under the care of Dr. Gwin, but before I was at home, and before I actually left town, I received a call from a man whose name I do not recall, but he identified himself as a U. S. Marshal.

Q. All right, sir, what was the, can you relate as best you can the conversation that transpired?

A. As I recall it, the Marshal asked me why Mr. Logue was in the hospital, was it because of the injury to his arm, or was it because of his mental condition. And then I asked the Marshal if the reason he was hospitalized would have [150] any bearing on whether or not he removed him from the hospital, and he told me, "No, it wouldn't, that it was a matter of who was financially responsible." I told the Marshal that the patient was hospitalized because of his mental condition, that I felt he should remain in the hospital, or else be transferred to another psychiatric facility, but should not be returned to jail at this time.

Q. All right, sir—

A. —That was the end of my conversation with him. I did not talk with him again.

Q. Did the Marshal say anything about it to you in response to what you had told him?

A. He indicated to me that he would not take him out of the hospital.

Q. All right. Doctor, what would be the reason that you would not have recommended that he be taken from the hospital at that time, other than to be placed in another hospital?

A. Because the patient was severely mentally disturbed at that time, and he had already made one suicidal attempt, which I felt was a serious one, and had inflicted an injury, and the possibilities of making another suicidal attempt, [151] in my opinion, were pretty great.

Q. I see, so you felt that either for him to remain where he was, or be removed to another similar facility, was really the only proper thing to do?

A. That is correct.

Q. Doctor, I believe you mentioned earlier that you are specializing in child and adolescent psychiatry, is that correct?

A. Yes.

Q. Would you think a young man of Reagan Logue's age—I believe he was seventeen at the time, according to his—

A. —It says eighteen on the medical records.

Q. All right, at the time, in his psychotic condition, would he be the type of patient you work with that falls within your speciality?

A. I have worked with patients of his type before, with an illness of his nature.

Q. Were you acquainted at all with this boy's history, Doctor?

A. Only to the extent that he had previously been under the care of another psychiatrist in Corpus Christi, by Dr. Cecil Childers; that he had ingested LSD, lysergic acids on several occasions [152] prior to his being incarcerated, and that he had made a previous suicide attempt.

Q. Did you obtain any history from him, or was it from other sources, or from the patient?

A. It was obtained from his parents who were present when he was brought to the emergency room.

Q. I see. Doctor, from your examination of this patient, and based on your medical knowledge, do you have an opinion based on reasonable medical probability as to whether or not Reagan Logue could have been cured, or rehabilitated from the psychotic condition from which he was suffering at that time?

A. With proper medical treatment, in my opinion,

there is a reasonable probability he could have been rehabilitated.

Q. Now using the word, "rehabilitation," is that in a permanent sense or some other sense?

A. That is impossible to say.

Q. All right, by rehabilitating someone who has, whether it be because of drugs or for some other reason, who is psychotic, in reasonable medical probability, a person who is rehabilitated, can that person proceed to lead a normal life, [153] free of the problems which we might associate with this type of mental condition?

A. There is a probability that they can.

Q. Would the fact that this boy, as then, eighteen years of age, would this be in his favor, or against him insofar as rehabilitation is concerned?

A. The fact he was young would be in his favor.

Q. Was his condition such, Doctor, that it would be apparent, even to a layman, that this boy was mentally disturbed?

Mr. Pain: Your Honor, I will object to that. He is asking the Doctor what it would appear to be to a layman, and I object. Now he can ask the Doctor's opinion, but as far as asking the Doctor what it would be, would appear to a layman, I will object to that.

The Court: I will sustain the objection.

Mr. De Anda: May I make a small protest, Your Honor?

The Court: Sure.

Mr. De Anda: The nature of the question, Your Honor, was, as I intended, I think, his reasonable interpretation of it, [154] whether these symptoms would be obvious to anyone. In other words, you can have a mental condition that only a doctor might appreciate, or recognize, or you can have a mental condition that anyone, by the very nature of the symptoms, would recognize, and I think certainly that would be, if it does require an expert witness to answer the question, that that would be within his expertise as a way to describe this patient's symptoms, that was my purpose in the question.

Mr. Pain: Your Honor, well, Your Honor, the answer that he gives in the record there, without stating it, it just states what a layman would perceive.

The Court: I am going to sustain the objection.

Mr. De Anda: All right, sir.

Judge, might I read this into the record for the purposes of my exception to the Court's ruling?

The Court: Sure.

Mr. De Anda: The reason—"In my opinion it would be apparent to a layman."

[155] Well, let me, maybe, Judge, if the next question I asked him was this, and let me ask the Court now if this is proper, "And why would it be apparent to a layman, Doctor, what were the symptoms that he manifested?" Would the Court permit that question?



The Court: Not the first part of it.

Mr. De Anda: All right.

The Court: You can, you can ask a doctor what symptoms were apparent for him, and I think his answer would be, it would be satisfactory, but I think the way that question is phrased, I'm going to have to sustain an objection on that, too.

Mr. Pain: The first sentence of his answer, Your Honor, I have no objections to, but I do object to the second sentence of the answer and also the questions.

The Court: I am going to sustain the objection, both to the question and to the answer.

Mr. De Anda: All right, how about the second part which was, "What were the symptoms that he manifested?"

The Court: Let me see how that is stated. (Looking at instrument) Mr. Pain, your objection was to the last sentence of the answer?

Mr. Pain: Yes, sir.

The Court: I will admit the second part of the question and the first sentence.

Mr. De Anda: All right, sir.

By Mr. De Anda:

Q. What were the symptoms that he manifested?  
Line 20.

A. Okay, because he was psychotic, he was talking rather openly about his hallucinations of seeing things that were not there.

Q. All right, did you have the occasion to see him subsequent to his discharge from the hospital?

A. I did not see him after the night that I admitted him.

Q. Was his removal from the hospital, and his return to jail, in your opinion, medically a very unsound thing to do?

A. In my opinion it was medically contri-indicated.

Q. All right, and his removal was contrary to your recommendations?

[157] A. It was.

Q. That you made to the Marshal?

A. It was.

Q. Doctor, based on reasonable medical probability, could you have anticipated that Reagan Logue, if removed from the hospital and taken to jail, would again make a suicide attempt?

A. I think this was a reasonable possibility, and this was one of my main reasons for hospitalizing him.

Q. That is also your reason for suggesting to the Marshal that he be kept in the hospital, or transferred to another medical facility?

A. It was.

Mr. De Anda: Your Honor, the next questions are cross examination by Mr., Mr. Pain, but I will go ahead and read them.

Mr. Pain: If you are getting tired, I will read them.

Mr. De Anda: Okay, why don't you.

Mr. Pain: For the purpose of helping to save his voice, I will go ahead and read these.

The Court: Okay, he sounds weak.

[158]                    CROSS EXAMINATION

By Mr. Pain:

Q. I notice on the hospital records, on the progress notes which I think is the third Page of such records, that you made a notation to the effect of, and I quote, "U. S. Marshal told patient should remain here until transfer to another hospital, but Judge Connally ordered him returned to jail." Is that your handwriting?

A. It is.

Q. And you made that entry in these particular records, is that correct?

A. I did.

Q. And you were the one that told the Marshal this by telephone on the morning of the 24th?

A. I did.

Q. Is that correct?

A. I did.

Q. Now this was in response to this particular Marshal calling you and asking you what would keep the patient in the hospital, is that correct?

A. He asked me why I had hospitalized him; more specifically, was it because of the cut or was [159] it because of his mental condition. He offered me those two alternatives.

Q. Now, if we can, let's try to pin down this telephone call a little more specifically. I think that you have testified it was about 8:45 in the morning, Friday, May the 24th, if I understand correctly?

A. I think I said around 8:00 o'clock.

Q. Around 8:00 o'clock?

A. As near as I can tell. I left early that morning for Galveston, and I get off duty at 7:00 A.M., so it must have been around 8:00 because I was at home.

Q. Now you had been on duty up until 7:00 A.M., on the morning of the 24th of May, 1968, at Memorial Medical Center, is that true?

A. That is correct.

Q. How long had you been on duty?

A. We were on duty for twenty-four hour periods. I began at 7:00 A.M. on the morning of the 23rd, and was relieved at 7:00 A.M. on the morning of the 24th.

Q. This twenty-four hour period of duty does not call for, does not necessarily call for your being awake at all times and performing your [160] duties at all times, does it?

A. No, only when there are patients in the emergency room, or in the rest of the hospital, that are in need.

Q. There are facilities available for you to get a night's rest, then, if there are no pressing emergencies for you to take care of, is that correct?

A. That is correct.

Q. Do you recall that you got a good night's sleep that night or not?

A. I do not recall.

Q. Do you recall if you had a very busy day beginning at 7:00 A.M. on the 24th of May, 1968?

A. I do not recall how busy. Our duties on that emergency room were highly variable and I do not remember how busy I was that day or night.

Q. You say you were planning a trip on the morning of the 24th?

A. That is correct.

Q. By what mode of transportation?

A. I drove.

Q. And where did you go?

A. From Corpus Christi to Galveston.

Q. Had you been up all night attending to patients [161] without any appreciable sleep or rest, would you have attempted that trip?

A. I probably would have left later, however, I probably would have made the trip.

Q. Where were you when you received this telephone call from the person who identified himself as a United States Marshal?

A. I was at home.

Q. Where was that?

A. 1521 Ocean Drive, Corpus Christi.

Q. Is that an apartment number?

A. There is one there, but I do not recall what it was.

Q. Could it have been Apartment 5?

A. It might have been.

Q. Are you married now?

A. No, sir.

Q. Were you married at that time?

A. No, sir.

Q. Did you have any roommates where you lived?

A. I lived alone.

Q. How old are you now?

A. Twenty-seven.

Q. And you were twenty-five at the time?

A. That is correct.

[162] Q. Referring again to this entry, when are such entries made on this particular document?

A. This particular record is not the one that is ordinarily used. If you will notice at the bottom, this is a Short Stay and Physical. Had the patient been in longer than forty-eight hours, we would have used a different form. So when he was dismissed early, this form was filled out and it was filled out after the patient's dismissal from the hospital when the medical record was returned to me for completion.

Q. Is that the ordinary course of doing business with these particular types of records here?

A. That is the general procedure since one can not always anticipate whether a patient will be a short stay or a long stay, and that is the reason for that.

Q. Do you recall when you made this entry?

A. I do not recall exactly; however, I generally did my medical records as soon as they were returned to me, which would put it early the following week.

Q. So perhaps Monday or Tuesday?

A. Monday or Tuesday, probably.

Q. I notice on here that the notation quotes, [163] "but Judge Connally ordered him returned to jail." How did you know that?

A. When I returned from Galveston the following day I heard on the radio as I approached Corpus Christi that a boy named Reagan Logue had hung himself in jail. When I got back to Corpus, I telephoned Dr. Gwin who told me that Judge Connally

had ordered him to be taken out of the hospital. That is my only source of that information.

Q. When did you telephone Dr. Gwin?

A. I telephoned him the next morning.

Q. That would have been Monday morning?

A. That would have been Sunday morning. I went to Galveston and returned the same day.

Q. That would have been Sunday morning, May the 26th, 1968?

A. That is correct. It could have been Monday, but I think it was Sunday, I can't be sure.

Q. But you did travel from Corpus Christi on the 25th, excuse me, on the 24th, to Galveston, and returned back to Corpus Christi on the same day?

A. I believe I did. Again, I am not certain, I would have to check my calendar.

Q. I think I misstated the question. Now you would [164] have returned back to Corpus Christi on the 25th, then, if you heard that over the radio.

A. It may have been the 25th, I do not recall whether I stayed overnight in Galveston that Saturday night or not.

Q. Saturday was the 25th?

A. I believe, wasn't Saturday the 24th?

Q. I don't believe so, sir.

A. I do not recall what day I returned.

Q. Nevertheless, you left Corpus Christi on the 24th?

A. The day after I saw the patient, I know I left for Galveston the following morning.

Q. That would have been the 24th?

A. That is correct.

Q. The 24th of May, 1968?

A. That is correct.

Q. And you do not recall whether or not you came back from Galveston to Corpus on the same day, or whether it was the following day?

A. I do not remember.

Q. And you do not recall the day that you called Dr. Gwin, whether it was Saturday, Sunday, or Monday?

A. I do not recall.

[165] Q. Where did you call him?

A. I was back in Corpus Christi when I called him, and I don't recall whether I called him at his office or at home.

Q. The first news that you heard of the boy's death was over your car radio while traveling from Galveston to Corpus Christi?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. When you made this entry, were you aware of any discussions that had occurred between one of the Deputy Marshals, Deputy Bowers, and Shannon Gwin?

A. After I called him, he told me he had also talked to a Marshal, and the Marshal had telephoned him, apparently, after he telephoned me that morning.

Q. Were you aware of any personal conference between the Deputy Marshal and Dr. Gwin at the hospital?

A. I do not recall.

Q. You don't recall his mentioning it?

A. I do not recall.

Q. So you have no knowledge of any such personal



[166] conference, if there was any, between Deputy Bowers and Dr. Gwin at the time you made this entry, is that correct?

A. Possibly not.

Q. Well, you just said—

Mr. De Anda: —And then Mr. De Anda says, "Just for clarification, do you know who Mr. Bowers is, or do you know him?"

The Witness: I do not know him, no. I do not know whether Dr. Gwin had told me of having a personal conference with the Marshal or not at the time I wrote this, because I do not remember exactly when I wrote it.

By Mr. De Anda:

Q. The question continuing—

By Mr. Pain:

Q. Had he told you about the personal conference? Do you recollect him telling you any of the contents of the conference?

A. The only thing that I recall specifically regarding his conversation with the Marshal was, whether it was in person or on the telephone, was he also recommended that the patient remain [167] in the hospital or be transferred to another hospital.

Q. But that could have been by telephone, could it?

A. It could have been:

Q. Do you recall being interviewed about a week later by an F.B.I. agent, Penrod Harris?

A. I do.

Q. And about what time was Reagan Logue first brought to you in the emergency room for treatment?

A. He was brought to the emergency room at 5:15 P.M.

Q. On what date?

A. May the 23rd, 1968.

Q. When he first came in, what was the first thing you did?

A. After examining the patient, examining his wound, I sutured the wound.

Q. Did you notify his parents or make an attempt to do that first?

A. I believe that his parents accompanied him to the emergency room, if I recall correctly, or they were there shortly after he arrived.

Q. Did you state to the F.B.I. agent that since the boy was apparently under twenty-one, his [168] parents had to be notified prior to your performing any treatment on him?

A. This is our general policy. I am sure they were either notified or were there, and I do recall them being there. Now whether they were there at the time I sutured him or not, or gave permission over the telephone, I do not recall.

Q. Didn't you have to wait for awhile for them to come and get permission to give the boy treatment?

A. I may have, I do not recall.

Q. Do you recall the presence of the boy's parents while you were treating the boy, Reagan Logue?

A. I recall talking with them, yes.

Q. Do you think that you would recognize them again if you were to see them?

A. I doubt it. I only saw them briefly that one time.

Q. Do you recall the impression that you got of Reagan Logue's father when he came in?

A. I do not recall any particular impression.

Q. Didn't you state to the F.B.I. agent that when he came in, Reagan's father was extremely hostile, smelled of alcohol, seemed to be a little drunk, and that he impressed you as being an unsavory character?

[169] A. That could possibly have been, I do not remember.

Q. That doesn't refresh your recollection any?

A. No, it doesn't. There is, that is a fairly common occurrence in an emergency room, to have people come in in that condition.

Q. And then didn't you find it necessary to confer with the father for a short while before he would give permission for you to treat Reagan Edward Logue?

A. I do not recall.

Q. Didn't you confer with a lawyer during this time concerning Reagan Logue's treatment?

A. There was a lawyer who was there with the parents.

Q. Do you recall his name?

A. I believe it was Marvin Foster.

Q. And had Logue and his parents both stated to you that Logue had been on an LSD trip about a month ago?

A. As I recall, they did.

Q. Now about, along about this time didn't you make a recommendation that Logue be hospitalized on the psychiatric floor of the hospital?

A. Yes, I did.

[170] Q. And to be put in a seclusion room with maximum security?

A. I did.

Q. This was your recommendation?

A. Yes.

Q. Do you recall any reluctance on the part of the parents, either one?

A. I do not recall.

Q. But they ultimately agreed, whether it was soon or later?

A. They did agree.

Q. But if there was any reluctance, you don't recall any, is that correct?

A. I don't recall it.

Q. It was upon the parents' request, wasn't it, that Dr. Gwin was contacted, is that correct?

A. I believe it was.

Q. And it was during this contact that you had with the patient and the parents in the emergency room, that this was first brought up, is that your recollection?

A. What was first brought up?

Q. The contact with Dr. Gwin.

A. I believe so. Generally, in emergency room cases, there was a psychiatrist on the staff [171] who was assigned to cover with regard to patients who came in who did not have their own psychiatrist and needed psychiatric treatment. I do not recall if Dr. Gwin was assigned that night, or whether this was a specific request on the part of the parents.

Q. Was another doctor assigned on duty that night, a Dr. Walker?

A. It may have been. His name appears on the

front sheet of the report, as a matter of fact, he probably was.

Q. And is he a psychiatrist?

A. He is a psychiatrist; however, when the parents, the family makes a specific request for a doctor, according to the rules of that hospital, they may have whichever doctor they choose. The doctor on call is merely the one there and when the family has no specific request—

Q. —Was it your understanding that Dr. Childers had seen Logue for psychiatric consultation?

A. It was my understanding he had seen him briefly.

Q. But it was not for any length of time?

A. I do not believe that it was.

Q. Was it further your understanding that Logue's father had apparently made it difficult for [172] Logue to obtain treatment from Dr. Childers?

A. I do not know. I never obtained any of the particulars of his previous treatment from Dr. Childers.

Q. So since you don't recall anything about the difficulty that Logue's father may have made for him in seeing Dr. Childers, you wouldn't know exactly how he made it difficult?

A. I wouldn't know.

Q. You prescribed thorazine, the first dose to be given intramuscularly, and subsequent doses to be given orally.

A. That is correct.

Q. And then he was taken to the psychiatric ward right after this, or his stay with you at the emergency room?

A. That is correct.

Q. About what time was he taken to the psychiatric ward?

A. I believe around 6:30 P.M.

Q. Would you—

A. —I will look—

Q. —check the records to make sure?

A. According to the record, he was discharged from the emergency room at 6:35 P.M., which [173] would be the time he was transferred.

Q. Did you go with him up to the psychiatric ward?

A. I do not recall. I don't believe so. I believe that I checked on him once later that evening.

Q. Didn't you indicate to the F.B.I. agent that you did not see Logue again after you saw him at the emergency room?

A. It is possible that I did not.

Q. And that would not be necessarily untrue, I mean, you just don't recall whether or not you saw him or not?

A. I do not recall. If I did see him again, it would have been only briefly that night, or it may have been, or it may have just been to check with the nurses on his general condition.

Q. If you did see him, it may have been that you stuck your head inside the door and glanced—

A. —That's right, it would have been very brief.

Q. So your contact with Reagan Logue was from a period of time on the 23rd of May, 1968, from about 5:15 until about 6:30 P.M., is that correct?

A. That is correct.

Q. About an hour and fifteen minutes?

A. Yes.

[174] Q. Now during this approximately hour and fifteen minutes, did you have other patients that you were taking care of?

A. As I recall, there were other patients in the emergency room.

Q. Did you have duties in connection with these other patients?

A. I am sure that I did, although I do not recall the nature of the patients.

Q. And wasn't there a certain period of time after Logue arrived at the emergency room that you had to wait for his parents before you could do anything with him?

A. There could have been.

Q. About how many other patients were in the emergency room, to the best of your recollection, in addition to Logue, that you would have had duties with?

A. I can't even begin to recall; that is highly variable.

Q. There could have been as few as zero?

A. That is correct.

Q. Is it your recollection that you were with Logue constantly from the time that he was in the emergency, was admitted to the emergency room, [175] until he departed for the psychiatric ward?

A. I believe I was with him intermittently.

Q. Did you talk with him much?

A. I talked with him while I was suturing the wound, and again after I had sutured it.

Q. Is that the only conversation you had with him?

A. I believe so.

Q. While you were suturing the wound, do you

recall the contents of the conversation you had with him?

A. Not precisely.

Q. Can you tell us, generally, what it was?

A. Well, I believe that, generally, what I usually do in a way is ask him how he was feeling. When he appeared to be psychotic to me, I asked him what was wrong, and he appeared to be seeing things, or hallucinating, and I asked him specifically what he was seeing, and he mentioned God, and Jesus Christ, and the Angels. I asked him if he could tell me when was the last time he had taken any drugs, and I asked him specifically had he taken LSD recently, and as I recall, he stated he had taken it about a month prior to that time.

Q. Did you make any conversation as to the wound [176] that he had on his left arm?

A. I believe I did. I don't recall the nature of it.

Q. You mentioned some conversations after you sutured his wound, do you recall, generally, those?

A. As I recall, I went back and talked with him a little further after I sutured his wound, and had gotten the impression that he was extremely disturbed, and I believe I did have a conversation with him about putting him in the hospital, but I don't recall the exact content of the conversation.

Q. Do you recall talking to his mother?

A. I do.

Q. And what was the content of that conversation?

A. Other than recommending that he be put in the hospital, and that I was concerned that he might make another suicidal attempt, I don't recall.

Q. Did she appear to be rational?



A. As near as I can remember, she did.

Q. Do you recall talking to his father?

A. I recall talking to him, yes.

Q. Do you recall what the context of your [177] conversation was?

A. No, I don't. I may have even talked to both his mother and father together.

Q. Is his father a big man?

A. I believe he was.

Q. About how old, would you say?

A. If I remember correctly, he appeared to be a man around forty-eight to fifty years old.

Q. Was his mother younger or older than his father?

A. I do not recall.

Q. Didn't Dr. Gwin subsequently telephone you later that night?

A. I believe he did, but I do not recall specifically. However, I admitted the patient under Dr. Gwin, and I must have talked with him at some point that evening, because it was my general practice to talk with the staff physician before admitting a patient to them. Possibly the patient was originally admitted under Dr. Walker, then the parents later requested Dr. Gwin to look in, and he may have called me then, I do not recall.

Q. Assuming the patient was admitted under Dr. Walker, and Dr. Gwin assumed the care of the boy at the request of the parents, and Dr. Gwin [178] called you later that night, at that point he would have taken over the care of the patient, would he not?

A. He would have.

Q. And the patient would have been his responsibility, as far as the hospital is concerned, is that correct, is that a correct statement?

A. That is correct.

Q. You were due to get off duty the following day at 7:00 o'clock A.M., which would have been the morning of May the 24th, 1968, is that correct?

A. That is correct.

Q. Now before you left the hospital, did you receive a telephone call from a man who said he was a Deputy, a U. S. Marshal, but you didn't talk to him, do you recall that?

A. I may have, I do not recall.

Q. The nurse gave you this message, didn't she?

A. She may have, I don't recall. The only conversation I specifically recall was the one I had received after I had returned home.

Q. Do you recall telling the nurse to tell the man that since Dr. Gwin had agreed to take the case, any communications about Logue should come [179] from Dr. Gwin?

A. I may very well have said that.

Q. Do you recall shortly after arriving at your home from the hospital, receiving a call from the hospital insurance office, from perhaps a Mrs. Johnson?

A. I do not recall.

Q. You don't recall telling her that you did not wish to comment on the patient because he was Dr. Gwin's patient?

A. I do not recall.

Q. Did anyone ever tell you of the precautions that were taken in the Nueces County Jail to receive Reagan Edward Logue there at the Memorial Medical Center?

A. I understand that he was not allowed to have any clothing other than underwear in the cell, but that is all I know about it.

Q. And from what source did you get this information?

A. I don't remember; it just happens to stick in my mind is the only thing I recall about it.

Q. Do you know where you received this information?

A. I do not know.

Q. It would have been after the boy had already [180] died?

A. Yes, it would have been after I had returned also.

Q. And then shortly after you got home from the hospital, on the morning of the 24th, you got a second telephone call, this time from a person who identified himself as the Marshal, is that correct?

A. I received a call from the Marshal. I don't know whether I got another phone call before he telephoned or not.

Q. And if you would—I realize it was covered in direct examination, go over this again, what he said to you and what you said to him, as to the best of your recollection.

A. Sir?

Q. What did he say, first, to you?

A. The conversation—he identified himself, and I believe that the main point of the conversation was that he asked the specific reason that I had recommended hospitalization for this patient; whether it was due to the injury to his arm or whether it was due to his mental condition. I believe then that I

asked him if what I said was going to make a difference as [181] to whether or not he removed him from the hospital. I also believe that the reason that he called me was he could not get in touch with Dr. Gwin at that time, but I am not sure about that, and he stated to me, as I recall, that this was simply a matter of who was financially responsible for the hospital bill. That if he was hospitalized because of the cut, then the government was responsible for the charges; and if he was hospitalized because of his mental condition, then the person would be responsible. And I told him that he was hospitalized because of his psychiatric or mental condition.

Q. What else did you tell him?

A. I believe I recommended that he remain in the hospital, or be transferred to another hospital, but not be returned to jail at that time because I felt that the possibility of making other suicide attempts were fairly high.

Q. You believe, you say you believe this, could you state for a certainty you did say this to the Marshal?

A. I'm certain in my own mind that I said this.

Q. That if the boy were to be removed, it should [182] be to another mental institution, but not to the jail, that was the sum and substance of what you told the Marshal?

A. Yes, that is right.

Q. After you told the Marshal that, what did he say, if you can recall?

A. I do not recall that he made any particular comments about it.

Q. Did you have anything else to say to him?

A. I do not recall. As nearly as I remember, that was the end of the conversation.

Q. What is a Kerlix bandage?

A. This is a rather long and strong piece of gauze-type material that is used in applying pressure dressings, where a wound had been sutured or repaired, and prevents the possibility of bleeding underneath the skin. It is a general practice to apply a pressure bandage, and this usually consists of a Kerlix and an Ace bandage, which is an elastic type bandage around the region of the arm. It would be applied in a circular motion around the arm.

Q. And that is the medical practice in this type of wound, and you ordered this particular [183] bandage put on there?

A. I did.

Q. Do you recall stating to the F.B.I. agent that the Kerlix bandage should not have been used?

A. I do not recall. My recollection was that when he was returned to jail, that this was what he used to hang himself with. Now in the seclusion room at Memorial Hospital, there was no complications of having this type of bandage because there was nothing it could be attached to, to hang himself with. What he attached it to in the jail cell, I don't know.

Q. What effect did your hearing about the boy's hanging himself have upon you when you were driving back to Corpus Christi?

A. I was very surprised and shocked because as far as I knew, he was still in the hospital.

Q. And I think you stated on direct examination that you regarded the actions of the Marshals in removing the boy as being unsound?

A. I did.

Q. Would you perhaps change your mind if you knew the contents of the conversation between the Marshals, or the Deputy Marshal and Dr. Gwin on the afternoon of May the 24th?

[184] A. I suppose that depends entirely upon what the contents of that conversation was. From my knowledge of the case, and my own opinion, it was unsound to remove him from the hospital to the jail.

Q. But that was with the information you had at that time?

A. With the information I had at that time, yes.

Q. You mentioned on direct examination that thorazine is a type of medication that is sedating.

A. It has a sedating effect, yes.

Q. But that on some people who have perhaps become accustomed to using it, it has no effect, am I quoting you correctly?

A. No, what I said, once a person becomes accustomed to it, the sedating effect of thorazine is not marked or noticeable, it still has the tranquilizing effect.

Q. Would you be able to tell in the contact that you had with Reagan Logue whether or not the thorazine that you gave him had this sedating effect?

A. As I recall it, it did sedate him.

Q. Have you had much experience with patients who [185] have taken LSD trips, or who have been using LSD?

A. Yes, I have had a fair amount of experience with them.

Q. Had you had less experience in May of '68 than you do now, though?

A. Certainly, however, at that time I had had some experience with it during the time I was in medical school, and the time I had spent at Memorial Hospital.

Q. Can you give an estimate of how many patients you had treated for LSD reactions up until May of '68?

A. Just estimating, I would say about six or eight.

Q. About how long would an LSD trip last, would the hallucinations last?

A. It depends on whether you are asking about the specific effects of the drug itself, or the after-effects, which some people have.

Q. Let's start with the specific effects.

A. The specific effects of the drug itself, generally, do not last longer than twelve hours, and we do not know them to last for more than twenty-four hours. Those are from the direct ingestion of the drug.

[186] Q. What are the other effects?

A. Some people, for unknown reasons, and this occurs erratically, and is unpredictable, some people will become psychotic after ingestion of LSD, and will remain that way, as if they were still on a trip, and will continue to hallucinate and continue, in lay terms, to be "crazy", for a lengthy period of time, up to several months following the ingestion of LSD. It is also known that some people, for some unknown reason, will take a trip, as they call it, on LSD, will recover within a twenty-four hour period of time, and then anywhere from a few days to several months later again experience the same symptoms when they originally took the LSD without getting it again.

Q. To the best of your knowledge, did Reagan Logue have access to LSD while in the hospital?

A. To the best of my knowledge, he did not.

Q. What type of clothing did he have on when he was brought into the emergency room, do you recall that?

A. I do not recall. My general impression was that he had on a shirt and a pair of slacks, but I don't recall, really.

[187] Q. Didn't you make a search of him to determine if he, perhaps, had some LSD or other drugs in his pockets?

A. I did not, but it is the general practice of the psychiatric unit when a patient goes into a seclusion room, he takes off all his clothes and they are searched, and he is placed in hospital pajamas.

Q. Was this done?

A. It is the ordinary and customary practice of Memorial.

Q. Back to the effects of LSD—I think you mentioned that it causes psychosis; would the term, "causes psychosis", be more accurate than the term, "tripping", a latent psychotic underlying situation that an individual may have?

A. It would be more accurate to say it would be a reaction to toxicity, or a psychotic reaction resulting from the ingestion of the drug.

Q. That would last perhaps twenty-four hours?

A. That would be your limited effect, the effect of the drug. The longer lasting reactions, those that come back later without reingesting of the drug, it would be more accurate to say [188] they were latent psychosis of personality disturbances which



were upset or triggered off by ingestion of this drug. This is something that is not precisely known at this time even.

Q. So if you have two individuals taking the same dose of LSD, one individual has a latent psychotic personality, and the other individual is normal and is, as far as you can tell, a normal person, normal, and they both take LSD, and the one with the latent psychotic personality traits is more likely to have those long-term post-effects, is he not?

A. One usually makes this prediction. Unfortunately, it does not necessarily hold true.

Q. It is more likely?

A. It is more likely, yes, I believe that would be correct.

Q. It is not uncommon for a normal person without these latent psychotic personality traits to take LSD and just be through with it after his initial hallucinatory period?

A. It is not uncommon at all. In fact, this is probably what occurs in a majority of the cases.

Q. In your own mind, when did Dr. Gwin assume [189] the responsibility for the patient from you?

A. Technically, he assumed responsibility from the time the patient requested him to take over. However, in all actuality, he assumed responsibility at the time I went off duty the next morning, because the intern comes into the emergency room for the night.

Q. Wouldn't Dr. Gwin enter into the primary responsibility of the patient at the time that he made his initial visit to him in the hospital?

A. Technically, yes.

Q. And if he did make a visit to the patient in the

hospital at about 8:00 o'clock on the night of the 23rd of May, 1968, then from that period on, he would have had primary responsibility and not you?

A. That is correct.

Q. And consequently, when you told the Marshal that he should not be taken to the jail, that if he were to be taken anywhere it should be to another mental hospital, that was during the period, a period of time where Dr. Gwin had primary responsibility for the patient, isn't that correct?

A. That is correct. As I recall, I believe I [190] suggested to the Marshal that he should contact Dr. Gwin before doing anything, which I understand he subsequently did.

Q. Do you have any reason to disagree with Dr. Gwin's decision?

Mr. Pain: And Mr. De Anda says, interjects, "Wait just a minute, what decision are talking about?"

And Mr. Pain—"To release the patient."

Mr. De Anda: "Well, I will make the objection at the time of trial; that doesn't mean Dr. Gwin made that decision. If Dr. Gwin had made that decision, that he could be released back to jail, yes, I would agree."

Mr. Pain: Any comment?

Mr. De Anda: None.

By The Witness:

A. It is my understanding he recommended that he remain in the hospital also.

Q. Now when you left the hospital at 7:00 A.M. on the 24th of May, 1968, which was a Friday, when was the next time you returned to duty at the hospital?

[191] A. Well, of course, I assumed my regular patient duties, which at that time I believe, I believe I was on the obstetrical service on Monday morning. I probably, my general practice was to have one of the other interns with me make rounds on my other patients in the hospital when I was gone, so he probably did that on Saturday and Sunday, and I returned to my duties on obstetrical services on Monday morning. Now when my next tour was in the emergency room, I don't recall. We took this about once every ten days, I believe.

Q. So you didn't return to the hospital for any type of duty prior to the following Monday morning?

A. No, I certainly had no emergency room duties before the next week.

Q. Did you conduct any tests on Reagan Logue when he was admitted?

A. When he was admitted, I ordered the hospital routine laboratory studies, which I believe consisted of urine analysis, blood count, and a chest x-ray, and then I ordered three specific studies which were serum glutamic oxaloacetic—

Mr. Maxwell: I will just give this to [192] the Reporter.

Mr. De Anda: I have been waiting for that ever since he started.

Mr. Pain: Judge, these studies are difficult to

pronounce, and I don't even know if the Court Reporter spelled them correctly, I am suspicious of that, it wasn't this Court Reporter—

The Court: —Well, just let her copy it from the, from the record; I don't need to hear them.

Mr. Maxwell: Okay.

Mr. De Anda: Anyway, he was just referring to some tests that he ran, apparently, with reference to the drug ingestion which he goes on to explain.

(The following terms were given to the Court Reporter and are as follows: "which were serium glutamic oxloacetic, transaminace pyruvis, and analactic dehydrergenase.")

[193] By The Witness:

A. The reason for ordering these tests was because in any patient where there has been a drug ingestion, one cannot be certain with which one he has ingested, and which might be toxic to liver, and this was my routine and the other psychiatrists' routine in this particular type of case.

Q. Isn't there a test to determine whether a person has ingested LSD, a specific test for that?

A. No, at that time there was not, and as far as I know, at this time there is not. At any rate, if such a test were available, it was not available at Memorial Hospital. There were only two common tests that were available for Memorial for drugs, one for barbituates, and the other for bromides.

Q. Can you state how long a patient should remain in the hospital, a patient such as Logue, who has apparently attempted suicide, and apparently is under the influence of LSD, how long should he be kept in the hospital?

A. It depends entirely on the patient's clinical progress and condition.

Q. How long about would it take to determine that?  
[194] A. I would want at least a week of observation. Generally, I will keep a patient who has made a suicidal attempt at least a week.

Q. When did the results of those tests that you ordered become available?

A. They were not available until after the patient was discharged because the blood was not drawn until the following morning after his admission. This, again, is generally hospital procedure, that blood for the laboratory work be drawn the morning after it is ordered before breakfast is served.

Q. So, in making whatever diagnosis for treatment that you may be called on to make, had you been so called on, you would have without benefit or tests, or the results of the tests?

A. That is correct.

Mr. Pain: No further questions at this time.

Mr. De Anda: Physically, was the boy in good condition as far as your tests showed, other than the laceration?

The Witness: He was in satisfactory physical condition.

Mr. De Anda: Doctor, that's all that I [195] have.

(Close of Deposition)

Mr. De Anda: Judge, may I have just a few moments?

The Court: Why don't we take a fifteen minute recess right now and that will give you a chance to get your thoughts together.

(After a short recess, Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, and the following proceedings were had, to-wit:)

The Court: My apologies to the lawyers; I had a conference call that involved lawyers in Washington and Houston, and they wanted to argue a Temporary Restraining Order over the phone and I had a little trouble getting off the telephone, [196] but I'm sorry that I delayed you.

You may proceed.

Mr. De Anda: Your Honor, the next witness, evidence that we will present, will be the deposition of Dr. Shannon Gwin, which was taken here in Corpus Christi on—what date was that—Judge, this was damaged by the Hurricane—

Mr. Maxwell: —March the 11th, 1970.

Mr. De Anda: March the 11th, March the 11th of 1970. Your Honor, this is Mr. Pain's Direct Examination, but I am offering it.

[197] DEPOSITION OF DR. SHANNON GWIN,  
the witness having been first duly sworn to tell the  
truth, the whole truth, and nothing but the truth,  
testified as follows, to-wit:

### DIRECT EXAMINATION

By Mr. De Anda:

Q. Would you please state your name, please, sir?

A. Shannon Gwin.

Q. And you are a medical doctor?

A. Correct.

Q. Do you practice here in Corpus Christi?

A. Correct.

Q. How long have you practiced here in Corpus?

A. Fifteen years.

Q. Would you please state your educational and  
professional background, please, sir?

A. I went to the University of Texas Medical  
School in Galveston; internship in Wichita Falls; I  
took my residency in psychiatry in Galveston, com-  
pleted it in 1955, and have practiced here since.

Q. And do you have a specialty?

A. I am a psychiatrist.

[198] Q. And how long have you been in that spe-  
cialty?

A. For fifteen years.

Q. And here in Corpus Christi?

A. Correct.

Q. What hospitals are you admitted to practice?

A. In Spohn Hospital, Memorial Hospital, Thomas-  
Spann Clinic Hospital, Doctors' Hospital, Physicians

and Surgeons, I think that's the name of it now, it used to be out here on Weber, I think it is the P & S, isn't it?

Q. The P & S, Physicians and Surgeons, right. And what associations and societies are you a member of?

Mr. De Anda: And then I interjected, Judge, "For the record, if you want to, I will be glad to stipulate that the doctor is a specialist in psychiatry and qualified and licensed to practice medicine in the State of Texas, if it will save you time."

And then Mr. Pain continues—

By Mr. De Anda:

Q. All right, and do you have your license on file here in Nueces County?

A. Correct.

[199] Q. Do you know the deceased in this case, Reagan Logue?

A. I met this young man on the day that he was admitted to the hospital, at Memorial Hospital, on May the 23rd, 1968, I went up to see him that evening.

Q. Is that the first time you had met him?

A. I had met him one time before, but not as a patient.

Q. You had just met him one time casually prior to that?

A. Correct.

Q. At that time, on the 23rd of May, you did know him by sight, is that correct?

A. Correct.

Q. And you are admitted to practice in the Memorial Medical Center, is that correct?



A. That is correct.

Q. And this terminology, Memorial Medical Center, that is a hospital out there, is that correct, sir?

A. Right.

Q. And how long have you been admitted in that hospital?

A. Since I came to Corpus Christi, fifteen years [200] ago.

Q. And being admitted to that hospital for a period of fifteen years, you have admitted many patients to that hospital?

A. Correct.

Q. And, consequently, you have also released many patients from the hospital?

A. Correct.

Would you explain the mechanical procedure that you go through after you make the determination to admit a patient to this hospital, what mechanical procedure you go through to get this patient admitted to Memorial Hospital?

A. Well, now, I will answer that, but I will tell you that, that this, in this particular instance, the circumstances were a little bit different from the usual.

Q. All right, what I am after is, what you ordinarily do, not on this particular instance.

A. Under ordinary circumstances, I call the admission office and find out if they have a place, space for the patient, where the space is, and tell the persons who are to bring the patient in, where to take him, to take him to the admission office if, unless he is disturbed, [201] under which conditions sometimes they take them directly to the floor.

Q. Do you ever follow this up with any written

memorandum to the effect that the patient has been admitted by you, or is this ordinarily done purely orally?

A. This is usually done orally.

Q. And during the period that you, or during the period that the admitted patient, or your admitted patient is in the hospital, you have control over what medications he receives, and what treatment he receives, is that correct?

A. Correct.

Q. And would it be accurate to say that when the patient no longer needs the hospital facilities to which you have admitted him, you would release him?

A. That is correct.

Q. Would you explain the mechanical procedures that you go through when you cause a patient to be released from the Medical, excuse me, from the Memorial Hospital?

A. An order is written—

Mr. De Anda: —Then I interjected—

“This is in the usual case and not in [202] this case?”

And then Mr. Pain continues—

By Mr. De Anda:

Q. That is correct, that is in the usual case.

A. An order is written on an order sheet instructing the nurses to dismiss the patient and to whom and under what circumstances; in other words, if the patient is discharged to go home, then that is fine, he would be discharged either to someone, if it is

felt that this is appropriate, or to himself, if this is felt to be appropriate, and if he is discharged under other circumstances, say, being transferred to some other hospital, then this is written, that he is to be discharged in that manner. In other words, to be discharged to, well, for instance, if a patient is being transferred to a State Hospital, the patient is usually discharged to some Deputies who are to accompany the patient to the State Hospital.

Q. Now you say some entries are written down, you don't write those entries down, do you, sir?

A. Yes, sir.

Q. You do?

A. Yes, sir.

[203] Q. What form do you use in writing these entries down?

A. What do you mean, what forms?

Q. Well, what is the piece of paper that you write that down on?

A. On an order sheet.

Q. Is that part of the hospital records?

A. Correct.

Q. Do you actually make the entry itself, or do you merely initial or sign after the entry has already been made?

A. It can be done either orally, under which conditions it is subsequently initialed or signed, or it can be written directly.

Q. I see, so there would be two mechanical records whereby the entry or the dismissal is reflected on paper, one would be where you get an oral order, it is written down on the hospital document and you later sign it, is that correct?

A. Correct.

Q. And the second instance would be—

A. —Excuse me, usually if an order, say, is given for a patient to be discharged, if the order is given, say, over the telephone, then subsequently you would write your initials under [204] that order which has been written, say, by a nurse up there.

Q. Uh-huh, and the second instance would be where you, yourself, would make the entry?

A. Right.

Q. Indicating the release?

A. Right, if you happened to be on the floor and the chart readily available, then you would, in all probability, write the order yourself.

Q. What ordinarily determines whether or not you release a patient from the care of a hospital?

A. Well, if we have the authority to, to take care of the patient, in other words, if the authority is given to us by the patient himself, then we determine whether he is to be admitted, and when he is to be discharged on the basis of how we feel his condition is. If we have the authority through some other source, through commitment and so forth, then we can do it with or without the approval of the individual.

Q. Would it be an accurate statement to say that when you authorize a patient to be released, that medically speaking, he no longer needs the facilities of the hospital?

A. Well, no, this is not true, because a number of [205] our patients are transferred to another hospital for further treatment.

Q. All right, if you were to release him to another

*instance*, or institution other than another hospital, then would it be an accurate statement to say that he no longer needs the facilities of the hospital?

A. That would depend on whether we had the authority to hold the patient against his wishes. In other words, we can only treat without agreement or cooperation on the part of the individual if we have the authority, the authority is vested by a commitment purposes, or procedures, rather.

Q. Or from the patient itself?

A. Correct.

Q. Now you are aware, are you not, of Reagan Logue's admittance to Memorial Medical Center on May 23rd, 1968, are you not, sir?

A. Yes, I am.

Q. Did you make the initial admitting of this particular patient?

A. No, he was admitted through the emergency room.

Q. Do you know what doctor, if any, admitted him?

A. According to the emergency room notes, he was [206] admitted by a Dr. White.

Q. Do you know Dr. White?

A. I do.

Q. Is he still in Corpus Christi?

A. No, he was an intern at that time. He is presently in Galveston doing a psychiatric residency.

Q. What was the admitting diagnosis initially?

A. According to Dr. White, he was admitted because of a laceration in the left cubital fossae with a diagnosis of psychotic reaction secondary to LSD or some other drug, or ingestion of some other drug.

Q. Did that diagnosis remain the same during his tenure at the hospital?

A. Correct.

Q. Now, Dr. White admitted Reagan Logue, did you subsequently become involved with Reagan Logue?

A. This young man's mother called me and asked me to see the boy. I went up to see him that evening. I saw him—let's see—according to the nurse's notes, about 8:00 o'clock that evening, and then I saw him again the next morning about 9:45.

Q. So the first time you saw him was about 8:00 [207] o'clock on May the 23rd, 1968, is that correct, sir?

A. That is correct.

Q. Now the process, or when you made your initial visit to him, did you at the time become his doctor for purposes of the hospital?

A. I did.

Q. Was there any formal entry or formal recognition of that fact made, other than your visit to him?

A. No formal recognition.

Q. Is it just something that is accepted if you go visit?

A. It is, if you are requested to visit him, or requested to take care of him, as I was requested by his mother.

Q. And in your mind, and to the best of your knowledge, all the hospital minds, you became that patient's doctor?

A. Correct.

Q. And being that patient's doctor, you had control over what treatment and/or medications that he

was to receive while he was in the hospital, is that correct, sir?

A. Correct.

[208] Q. Would it be accurate to say that you superceded Dr. White as being Reagan Logue's doctor when you entered the picture at that time?

A. Well, you see, an intern is not a patient's doctor per se. He is a patient's doctor under the supervision of a so-called staff doctor.

Q. And you were the staff doctor?

A. Correct.

Q. Under whose supervision Dr. White was acting?

A. Actually he was substantially under the care of the intern on the psychiatric service at that time—wait a minute, I guess this is White, isn't it, yes, this must be White, this must be White.

Mr. De Anda: And I said, "Yes."

The Witness: Yes, sir.

Mr. De Anda: And then Mr. Pain continues—

By Mr. De Anda:

Q. After the patient received the treatment in the emergency room, was he later transferred to another portion of the hospital?

A. Correct.

Q. And what was that?

A. On the seventh floor.

Q. And what particular portion of the hospital was [209] that?

A. This is the psychiatric floor.

Q. And would you state again, for the record, the psychiatric diagnosis for admitting?

A. He was admitted with a diagnosis, presumptive diagnosis of psychotic reaction secondary to LSD or some drug ingestion.

Q. Would you explain what a psychotic reaction to LSD might be?

A. Apparently this boy had lost touch with reality; had expressed some religious idolations; told the nurse up there that he felt that, he felt strange, like the world was moving and he was standing still; that he felt that his spiritual self was much greater than his physical self, and expressed to her that he would like to be spiritual all the time, which could be accomplished by his dying.

Q. What was the means of information that told you he had obtained LSD?

A. This was elicited from the doctor in the emergency room who admitted him; then I subsequently found out from his mother that he had been at least accused of this on several previous occasions.

[210] Q. Do you have any objective means of telling whether or not a person is high on LSD, or is under the influence of LSD?

A. It cannot be told per se. We can tell if the patient is, is, if the patient appears to be out of contact with reality, but as to whether it is due to the ingestion of some toxic agent or some drug, that must be elicited by virtue of history.

Q. What—

A. —In other words, a psychotic reaction could exist without the ingestion of drugs; it could be on the basis of so-called indigenous, illness, or some-



thing without any apparent reason that we can attribute it to.

Q. Could you rather briefly describe the term, "psychotic"?

A. Briefly, I would say it is a loss of contact with reality.

Q. What, if anything, did you prescribe for Reagan Logue?

A. He was given only medication for pain. He had previously, he had previously received orders, or orders had been previously given for him to receive a so-called transquilizer, thorazine.

[211] Q. Now his initial admittance, was that based upon some injury to him?

A. As I say, he had a laceration of the left cubital fossae, here—

Q. —Do you have any indication as to what caused that?

A. I think it was self-inflicted.

Q. It is your information and belief it was an attempt at suicide?

A. This I would assume.

Q. And how long was Reagan Logue in the hospital?

A. He was discharged on 5-24-68, which was the morning after his admission, the night or evening of the 23rd of May, he was admitted to the seventh floor of Memorial at 6:45 P.M., on May the 23rd, and was discharged, discharged at 3:30 P.M. on the 24th.

Q. And you did authorize the release of Reagan Logue from the hospital, is that correct, sir?

A. Correct.

Q. And since you have only met him, had only

met him one time before, you had no awareness of whether or not he may have used narcotic drugs or hallucinatory drugs in the past, is that correct?

[212] A. I learned this through other sources, or I learned, I was told this through other sources.

Q. Were you told this at the time he was in the hospital or sometime subsequent?

A. Prior to his being in the hospital.

Q. Prior to his admission to the hospital?

A. Correct.

Q. And you have never treated, you had never treated Reagan Logue before this time in the hospital?

A. That is correct. It is my understanding that he had been treated by another psychiatrist.

Q. Now the circumstances surrounding Logue's stay and release from the hospital, did you have anything, any conversations with any Deputy United States Marshals during that time?

A. Yes.

Q. And do you know how many Marshals you talked to?

A. I think two.

Q. Do you recall their names?

A. No, I do not.

Q. Do you recall the time and roughly the context of those conversations?

A. There was a U. S. Marshal outside of Reagan's [213] room when I saw him on the evening of the 23rd, whom I just spoke to as I entered the room. Then on the morning of the 24th, a U. S. Marshal, another U. S. Marshal, a different U. S. Marshal was on duty outside of Reagan's room at that time. Reagan was in a seclusion room.

Q. Do you recall any conversations with any Deputy Marshals concerning his release and transfer back to the Nueces County Jail?

A. I was contacted by phone on the 24th.

Q. Do you recall about what time, whether this was in the morning or the afternoon?

A. I think probably it was in the afternoon.

Q. All right, sir.

A. I was informed that Reagan was to be discharged to be taken back to the jail, so I asked the nurse to write the discharge order for him to be discharged to the Deputies upon their coming for him.

Q. Did you have any personal reaction to this, like any opposition to this?

A. I had no real authority to have any opposition.

Q. And you didn't, didn't voice any opposition or any opinion as to the patient's well being to the Marshal, or if you did, or did you?

[214] A. I think the Marshal asked me if I thought that he should be discharged, or if I thought that he should be discharged from the hospital, and I said that it would probably, probably be more preferable for him to be removed to another hospital.

Q. So the conversation that you had with the Marshals concerning his release was over the telephone, is that correct, sir?

A. I talked to a Marshal up at the hospital the morning of the 24th, but then I had no further talk with him.

Q. When you talked with him on the morning of the 24th, was that in connection with his release?

A. This is when I told him that I thought that Reagan should remain in the hospital or be transferred to another hospital.

Q. Have you ever treated Reagan Logue's mother, Mrs. Logue?

A. I have.

Q. And when have you treated her?

A. I will have to get that chart, excuse me just a second. I will have to apologize to you, I can't find that record and my secretary is gone. I am not too good at finding charts.

[215] Q. If I may, Doctor, on your own independent recollection—

A. —Yes, this was several years ago; I'd say four or five years ago when I first saw her, and then I subsequently saw her about a year ago for two or three visits.

Q. When you saw her four or five years ago, was that the initial visit that she had with you?

A. Correct.

Q. How many times did she consult with you during that period?

A. I saw her, well, I had her in the hospital for a month or several weeks, and then I saw her on several occasions after she was discharged from the hospital, I saw her as an out-patient.

Q. Do you recall the diagnosis upon which you had her in the hospital on that visit four or five years ago?

A. I don't remember whether it was depression or whether it was anxiety reaction; I don't remember what her, her diagnosis was at that time.

Q. And you say she again visited you about a year ago?

A. That is correct.

[216] Q. And what was her problem at that time, if you recall?

A. She was brought into the hospital after having made some, some reported suicidal gesture.

Q. Did you admit her to the hospital?

A. Correct.

Q. Do you recall if she was in any way injured?

A. She had a mark around her neck which was reported to have been caused by an electric light cord, I think, being put around it by herself, I think.

Q. And your information, just to the best of your knowledge right now, was that that was a possible suicide attempt by hanging?

A. At least it was a gesture.

Q. Have you ever been aware of Mrs. Logue's abusing drugs, to any extent?

A. I know that she had on occasion taken a rather large, rather large quantities of sedatives.

Q. Do you know Mrs. Logue in any other way, other than professionally?

A. No, sir.

Mr. De Anda: And then my cross examination continues—

The Court: All right.

[217] CROSS EXAMINATION

By Mr. De Anda:

Q. Doctor, have you referred to any notes other than the hospital records?

A. That is all.

Q. During your testimony?

A. That is all.

Q. All right, now, and I refer you to those hospital notes, on the third page, I'm sorry, on the second page where it has the diagnosis in the emergency department, I presume that that is the admitting diagnosis, is that right?

A. Where, where are you referring to?

Q. Where it has emergency department diagnosis, treatment, and then disposition.

A. Right.

Q. Now the admitting, is that the admitting diagnosis?

A. Correct.

Q. That you referred to earlier in your testimony?

A. Correct.

Q. I believe that refers to some lacerations, or at least one laceration, and then it has the [218] notation, "psychotic reaction", is that right?

A. That is correct.

Q. To LSD?

A. Correct.

Q. And then on the first page of the hospital records, the final diagnosis is only, "psychotic reaction to drug ingestion, parenthesis (perhaps LSD) close parenthesis."

A. This was a presumptive diagnosis, yes.

Q. All right, then the results, again, shown on the first page of the hospital records, indicates that the condition was unimproved, is that correct?

A. Unimproved or essentially unchanged.

Q. Or unchanged, and that would be at the time of his leaving the hospital?

A. Correct.

Q. And that is signed by Dr. White and also by you?

A. Signed by Dr. White and undersigned by me, that is correct.

Q. And that would be, that would indicate that this is Dr. White's opinion and your opinion, and in which you concur?

A. Correct.

[219] Q. All right, and because Dr. White at the time was an intern in the hospital, he would have to be joined in these treatments of a patient by a staff member?

A. It would have to be approved, yes.

Q. All right, so you approved Dr. White's diagnosis and concurred in it?

A. Correct.

Q. Yes, sir, and then on Page three of the hospital records, there is a notation at the top, quote, "18YO", what's that?

A. Eighteen years old.

Q. Eighteen years old, the "Y" stands for years, and the "WM", that stands for—

A. —White male.

Q. Stands for white male, brought to "ER", that's emergency room?

A. Correct.

Q. From jail after suicide attempt.

A. Correct.

Q. Then—

A. —Two centimeter laceration.

Q. Laceration?

A. That's the left anti-cubital fossae.



Q. All right, the left anti-fossae, (spelling) [220]  
F-O-S-S-A-E?

A. Right.

Q. What would that be on your—

A. —The interior of the elbow.

Q. All right, and then there is the notation, "Patient was acutely psychotic, apparently from ingestion on LSD—"

A. That's one—

Q. —One month ago?

A. One month ago.

Q. Now this would be the history that Dr. White obtained because you were not present?

A. That's apparently what he elicited at the time of admission.

Q. All right, when you refer to history of the patient, this was obtained primarily through Dr. White?

A. Through Dr. White, through the patient's mother, and then subsequently through other doctors.

Q. But not through the patient?

A. I saw the patient, yes.

Q. I say, but the history was not elicited from the patient?

A. Not per se.

Q. All right, at least by you?

[221] No.

Q. It might have been Dr. White, but not by you?

A. No.

Q. Then on progress notes, on that same place, there is a notation, "U. S. Marshal told patient should remain here until transfer to another hospital, but Judge Connally ordered him returned to jail," and



that is also signed by Dr. White and by you underneath.

A. That is what we were informed.

Q. Yes, sir, you were informed that Dr. Connally had ordered him returned to jail?

A. We were informed that.

Q. I mean Judge Connally—

A. —We were informed that he was to be returned to jail pending his transfer to some other government agency.

Q. I see, and it was in compliance with that information that you ordered his release from the hospital?

A. This is correct.

Q. And that was what you indicated earlier in your testimony when you said it was your recommendation to the Marshal that the man either remain in the hospital, or at Memorial, or that he be [222] transferred to another hospital facility?

A. That is correct.

Q. And I suppose the reason for that, Doctor, it was because he came in there because of making an attempt to commit suicide because of his psychotic condition, and that psychotic condition was unchanged or unimproved at the time he was taken from the hospital?

A. He appeared to be still psychotic at the time I saw him on the morning of the 24th.

Q. Yes, sir, and one of the traits of his particular psychotic condition was apparently a suicidal tendency, and so based on the fact that he still had this same psychotic condition, an unimproved or unchanged

condition, you could reasonably expect that he might again make some effort to take his life?

A. I would say that I would be more inclined to say unpredictable behavior.

Q. Yes, sir, well, as I gather from your testimony, then, Doctor, the man's discharge from the hospital, and I want to be fair with you and Dr. White, was not anything that you suggested, but simply something that you did in compliance with a, with the orders that you received from [223] the Marshals and the statement made to you that Judge Connally had ordered him back to the jail?

A. We had no authority to keep the boy there.

Q. Yes, sir, so you got him there because the Marshals brought him, and you let him go because the Marshals told you that, "We're going to take him"?

A. That is correct.

Q. All right, Doctor, I think that's all I have, thank you.

Mr. De Anda: And then, Your Honor, Mr. Pain continues with his redirect examination.

[224] REDIRECT EXAMINATION

By Mr. De Anda:

Q. Now at the time that the boy was released, you knew that he was going back to the Nueces County Jail, did you not?

A. This is what we were told.

Q. And, and did you voice any objections to that at that time?

A. None, none that I can recall.

Q. I don't have any more questions.

Mr. De Anda: Judge, I am missing a page 30 and—

The Witness: —“By Mr. De Anda: The reason for it was that, according to this hospital record, the Marshal had already been told by Dr. White that the boy should remain in the hospital and there wasn't any point in you telling him again, is that right?

By the Witness: Well, it was my understanding he had been told.

By Mr. De Anda: All right, thank you, Doctor.”

Mr. De Anda: Judge, I believe that [225] concludes the deposition of Dr. Gwin.

The Court: All right.

(Close of Deposition)

The Court: Well, in line with what we discussed earlier, we will recess and then, unless you are prepared to make a decision at this time—

Mr. Pain: No, sir, I am not prepared to make a decision at this time concerning the calling of Dr. Gwin as a live witness; I will make that decision within an hour.

The Court: We will recess then and, and I will tell the Clerk and the Court Reporter that Dr. Gwin

is going to have to leave and if we are going to use him, we may have to have a little night session, so we will recess right now until we hear from you. And if we don't have the night session, we will start at 9:00 o'clock in the morning, is that all right?

Mr. De Anda: Yes, sir.

Mr. Pain: Yes, sir.

The Marshal: Everyone rise, please.

[226]

(And thereafter on January the 27th, 1971, at 9:00 o'clock A.M., Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, and the following proceedings were had, to-wit:)

The Court: Are you ready to proceed, Mr. De Anda?

Mr. De Anda: Your Honor, I will call Mrs. Blouin to the stand, please, sir.

The Court: You were sworn the other day?

Mr. De Anda: Judge, I would like to make one inquiry—yesterday evening, after the recess, we went over to the County Jail to see the area where Reagan was confined. And I really don't know of any way that the Court can truly appreciate the surroundings there without just making a visual inspection. And I would appreciate it very much if, if Your Honor [227] would, and I would be glad to have Counsel,

Counsel and I could go with you, it won't take ten minutes, I hate to impose on you, but I really feel that it would be helpful and be very material to some of our contentions of the lawsuit.

The Court: I had concluded that last night, that I was going, that I was probably going to have to look at it, if there's no objection from the Government—

Mr. Pain: —No, sir.

The Court: —from the Government's standpoint, because I have got a semi-fixed picture about it and I have been up there, but it's been quite a few years.

Mr. De Anda: Yes, sir.

The Court: Let's go ahead with the testimony this morning, and when we recess at noon, we will see if we can't work out something, sometime to go over there.

[228] MRS. ALICE MARIE BLOUIN,

was called as the next witness on behalf of the Plaintiff, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

#### DIRECT EXAMINATION

By Mr. De Anda:

Q. Please state your name.

A. Alice Marie Blouin.

Q. And you were formerly Alice Marie Logue?

A. Yes, sir.

Q. Mrs. Blouin, you are living in San Antonio?

A. Yes, sir, at 1326 Austin Highway.

Q. All right, and you have remarried?

A. Yes, sir.

Q. When did you remarry?

A. April the 6th, 1970.

Q. And what does Mr. Blouin do?

A. He is a bookkeeper for the Army and Air Force Exchange.

Q. You have been in San Antonio for how long?

A. Almost two years.

Q. To shorten this a little bit, you are the mother [229] of Reagan Edward Logue?

A. Yes, sir.

Q. The young man who committed suicide in the Nueces County Jail back in May of 1968?

A. Yes, sir.

Q. Do you recall the date?

A. It was May the 25th, 1968.

Q. All right, Mrs. Blouin, did Reagan live with you all of his life time?

A. Most all of his life, other than after we got the divorce, me and his adopted father, then he lived with me part time and his dad part time.

Q. Now, let's see, you and Mr. Logue married what year?

A. '57 or '58, I believe it was '58.

Q. All right, then while you were, you were married, Mr. Orval Logue is the gentleman seated here and he adopted your boy, Reagan?

A. Yes, sir.

Q. Was he your only child?

A. Yes, sir.

Q. Now you have no other child?

A. No, sir.

Q. Mrs. Blouin, following, when was it that Orval  
[230] adopted Reagan?

A. It was in 1963, I don't recall the month.

Q. And Reagan was born when?

A. December the 14th, 1949.

Q. Without, without going, without telling me his natural father's name, you were married to his natural father?

A. Yes, sir.

Q. And to go a little bit into Reagan's background, now what was Reagan's relationship with his natural father?

A. Well, even as a child he really hated him because he was very cruel to Reagan. He wanted a model child, he was going to have a model son, and when he was six weeks old, Reagan was crying and he hit him in his nose and bloodied his nose, and it was things like that clear up to the time we divorced.

Q. All right, and so that, without going into any of the specific details, Reagan had a poor relationship with his father?

A. Yes, he did.

Q. With his own father at the time of the divorce?

A. Yes, sir.

Q. Following the divorce, did Reagan ever keep any  
[231] kind of a personal relationship, or contact with his natural father?

A. None whatsoever, and even when his natural



father would come to see him, Reagan didn't want to see him and wouldn't have anything to do with him.

Q. All right, now Mrs. Blouin, after your marriage to, to Mr. Logue, Reagan lived with you and Mr. Logue?

A. Yes, sir.

Q. And you say that he lived with you continually?

A. Uh-huh.

Q. Up until the time that you and Mr. Logue terminated that marriage?

A. Yes, sir.

Q. And there has been some testimony already as to the, to the, to the fact that you also, that you had some mental problems?

A. Yes, sir.

Q. About what time, when was that, that you had the mental problems?

A. In the year of 1966, I think it was, the first part of the year, maybe the spring.

Q. Did that require hospitalization?

A. Yes, sir, I was in the hospital.

[232] Q. And would that be for psychiatric reasons?

A. Yes, sir.

Q. And you were under the care of Dr. Gwin, as I understand it, I believe that's been developed.

A. Yes, sir.

Q. Do you recall about how long you were hospitalized?

A. About three months.

Q. What sort of treatment generally, what sort of medication did you receive, do you recall?

A. Well, I don't know the names of the medication



that I took, but I know I had insulin shock treatments.

Q. What kind of treatments

A. Insulin shock treatments.

Q. All right, and, and when weree you discharged from the hospital, do you recall?

A. I believe in March of '67.

Q. All right, and, and when were you discharged when?

A. I'm sorry, that was March of '66, I believe.

Q. That you were discharged from the hospital?

A. Well, now I'm confused, I can't remember, but I was divorced from Mr. Logue in August of '67.

Q. August of '67?

A. Yes.

[233] Q. And following that and up until that time, and except for the time that you were in the hospital, of course, you and Reagan, and Mr. Logue, lived together, I presume?

A. Yes, sir.

Q. Unless there were some separations prior to your divorce, were there any lengthy separations before your divorce?

A. No, no, sir.

Q. Now what about, let's talk about Reagan a little bit. There has been some assertions made—

Mr. De Anda: And, Your Honor, I don't accept that some of these, that these matters are admissible. The Government has made in its contentions, in the Pre-Trial Order, it has asserted a series of charges that at one time or another were filed against Reagan, and dating—I think there are about six or seven

different specific charges, apparently they've got an arrest sheet and set those out, and the theory on which they are contending that these matters are admissible are to put, apparently to, they are, they are limiting this purpose to show that, to [234] show some generalized conduct of negligence on the part of Mr. and Mrs., well, the then Mrs. Logue and Mr. Logue, in that these charges should have put them on notice of, to take some precautions, or to have Reagan hospitalized, or something. And as I understand the Government's contentions, they are not in there, I presume, for any other purpose other than that. And I am not at all confident that any of these matters are relevant, but since this is a trial before the Court, and preserving my objection to the relevancy of these charges, which are the acts of third parties and conclusions of third parties, it's also hearsay, and apart from the relevancy, and they do not represent convictions except in one particular instance, and I believe that has already been developed in the evidence, but I would like to be able to at least, if they are, if the Court is going to let them in, to be able to explain that, as far as this lady knows, some of these matters, but being subject to those objections to [235] them, and if the Court is not going to consider that for any purpose, I don't think I will need to go into it.

The Court: Well, of course, they are not in evidence yet. Why don't we wait and cross that bridge when we come to it, Mr. De Anda, and just not go into them at this time, and if you need to, you may put her back on by way of rebuttal, you can do that.

Mr. De Anda: All right, sir.

By Mr. De Anda:

Q. Mrs. Logue, in view of this development, let me, let me change something else just briefly—following your divorce from Mr. Logue, Mrs. Blouin, did you maintain any kind of a relationship with your boy, Reagan?

A. Yes, I did.

Q. Now, now this was in August of 1967?

A. Yes, sir.

Q. As best you recall, how often, or how frequently would you see Reagan following the divorce?

A. Well, I would actually see him at least every other day, and sometimes every day because we didn't live too far apart. But he was going to [236] school and he stayed with his father, so on the week-ends, he would spend the week-ends with me, but during the week, he didn't stay all night with me, but I would talk to him every day.

Q. All right, now he would spend his week-ends with you?

A. Yes, sir.

Q. I take it that you and Mr. Logue had no formal arrangements as to the custody or anything of that kind; it was more or less just left, leaving it up to Reagan?

A. Leaving it up to Reagan, yes, sir.

Q. Now when, did you ever change from that routine, his spending the week-ends with you and the week with his, and the week days with his father?

A. When he graduated from high school at mid-term in January, well, then, he would spend just as

much time with me as he did with his father. Maybe he would stay with me two or three weeks at one time, and then he would go back and stay with his father a couple of weeks, I mean, this is what Reagan would say, "Mom, I love you just as much as I do dad, and I want to stay with both of you."

[237] Q. So he was actually splitting his time, or dividing the time between you and Orval?

A. Yes, sir.

Q. Was Reagan devoted to Orval?

A. Yes, he was, very much so.

Q. When did this business of splitting, you say that began in January, then, when he graduated?

A. Yes, sir, after he graduated from high school.

Q. During this time following his graduation from high school, was Reagan employed?

A. Part of the time. He was working as a boiler-maker in construction work, and maybe they would have work, maybe they would have work for a week or so at a time, but I really don't think there was too much work at the present time. So I don't think that he worked more than maybe a week at one time.

Q. Now in 1967, while Reagan was still in school, did he, was he employed at any particular time, during the summer or during the school period?

A. Yes, sir, in the summer of, of '67, he worked as a boilermaker.

Q. Mrs. Logue, I have here Plaintiff's Exhibit, I'm sorry, Mrs. Blouin—

A. —That's all right.

[238] Mr. De Anda: I have here the W-2 Forms for 1967, Judge, which I provided to, a copy of to Counsel on Reagan Logue for his 1967 earnings. I do not have

a total; I have totaled them up, but I, but I misplaced my figures, but they amount to, Judge, I'd say, to about Thirteen or Fourteen Hundred Dollars. We can get an exact figure on that, and I would offer into evidence Plaintiff's Exhibit No. 3, which are the W-2 Forms for Mr., for Reagan Logue.

Mr. Pain: I have no objections.

The Court: It will be admitted.

Mr. Pain: Was it about Thirteen Hundred?

Mr. De Anda: About Thirteen Hundred.

By Mr. De Anda:

Q. Those earnings, whatever they reflect, Mrs. Blouin, would be earnings during the summer months?

A. Yes, sir.

Q. In '67 when he was still in school?

A. Yes, sir.

Q. And now did Reagan even before 1967 work outside of the home and earn money?

[239] A. Yes, sir, when he was about thirteen, I think, he had his first job at a TV Repair Shop.

Q. And did—

A. —I believe he made Twenty-five Dollars a week.

Q. All right, what other places did he work besides boilermaking?

A. He worked—

Q. —As a boilermaker.

A. He worked at Moore's Grocery Store, Handy-Andy, sacking groceries.

Q. All right.

A. After school, he did this after school.

Q. All right, do you know what Reagan would do with his earnings?

A. Yes, sir, he would spend it. He would give it to us and as he needed spending money, we would give it to him.

Q. During, for example, in 1967, his earnings in 1967, do you know what happened to that money, just generally, I don't mean to account for it penny by penny—

A. —Well, yes, well, he bought a car and accessories for the car, and he bought school clothes, and if there was any money left, he would always give it to me or to his father and [240] we would keep it for, a little money, just spending money for him.

Q. All right, you didn't spend it yourselves?

A. We could have, we could have spent it if we'd wanted to.

Q. But you didn't?

A. No, sir.

Q. It was usually used generally for whatever he might need?

A. Yes, sir.

Q. Now, now Dr. Gwin, at the time we took his deposition, didn't have his records, as I recall, and was testifying from memory concerning you—

A. —Yes, sir—

Q. —Mrs. Blouin.

A. Yes, sir.

Q. And you say that you were hospitalized in 1966, I believe?

A. Yes, sir.

Q. Am I correct? All right, now following your hospitalization, did you continue under the care of Dr. Gwin?

A. Yes, I did.

Q. And when was the last time that you saw Dr. Gwin prior to Reagan's death?

[241] A. Prior to Reagan's death?

Q. Yes.

A. I believe it would have been about six months was the last time that I had seen him before Reagan died.

Q. Were you doing better as far as your own condition was concerned?

A. Yes, sir, I was doing much better.

Q. All right, now after Reagan's death, what happened to you personally, as far as your mental condition and your, your problem?

A. Well, I was set back to almost where I was when I first started going to him. I was in this depressed state, so I had to continue my visits with Dr. Gwin.

Q. Now there is something in Dr. Gwin's deposition with reference to a suicide attempt on your part, that is in evidence—

A. —Yes, sir.

Q. When did that occur?

A. One year to the date after Reagan died, on May the 25th, 1969.

Q. Was that, was that effort at suicide, or whatever it was, was that because of Reagan or—

A. —Yes, it was. I was very depressed because [242] I had been to the cemetery.

Q. All right, now you saw Dr. Gwin because of that, didn't you?

A. Yes, sir.

Q. How many times after that did you see Dr. Gwin?

A. Well, I left San Antonio when I got out of the hospital, I moved my, I mean I left Corpus Christi and I moved my house trailer to San Antonio, so I didn't see Dr. Gwin any more after that; that was the last time.

Q. Did you see any other psychiatrist?

A. No, sir.

Q. Why did you go to San Antonio?

A. Well, Dr. Gwin recommended really that I go to San Antonio to the State Hospital. We discussed that and he said that I could be an out-patient there, that they had facilities that were better to treat me there than they did here.

Q. All right.

A. And I—

Q. —Pardon me; go ahead.

A. And so after I thought about it, why I just decided that I'm going to go on ahead and move to San Antonio so that I will be there in case I do have to go back in for another long stay [243] in the hospital. But surprising as it may be, after I got to San Antonio and in a new atmosphere, and away from everybody, I began to feel better, I wasn't depressed, and I didn't have this feeling that everybody was looking down on me.

Q. Well, let me ask you this—did you get, was it necessary for you to see any more, seek any more psychiatric treatment?

A. Evidently not because I didn't see one and I am doing good.



Q. Did you get a job?

A. Yes, sir, I did.

Q. And did you, you kept your job?

A. Yes, sir.

Q. And then you remarried?

A. Yes, sir.

Q. And apparently you have adjusted very well up to now?

A. Yes, sir, I sure have.

Q. All right, now the, Reagan, as you have mentioned, worked at least in 1966, '67, and '68 part-time in either, in the summers and after his graduation in January of 1968?

A. Yes, sir.

[244] Q. Where did Reagan go to school?

A. He went to Ray High School when he graduated.

Q. All right.

A. He went to King High his Junior year.

Q. There was some testimony, as I recall, either in your deposition or somewhere, that Reagan did not get his diploma until shortly prior to his death.

A. Yes, sir, he got it, I think he got it on May the 23rd, the day that he was arrested.

Q. All right, now do you mean that even though he graduated from school in January—

A. —Yes, sir, they didn't mail it to him until the end of the school year in May.

Q. I see, all right. Now what was Reagan's behavior there at home with you, with you and with, pardon me, I've got a sore throat and bear with me, what was Reagan's behavior, personally, his personal behavior towards you, Mrs. Blouin, and towards Orval at home?

A. He was very courteous with us. He never gave us any trouble with back talk or sassing us, I mean, he always seemed to mind real well. He was very quiet, he liked to read a lot, he stayed in his room. In fact, you would hardly know that he [245] was even around when he, he was even a small child.

Q. We know, it is in evidence, I believe, that Reagan was charged in Austin, I believe, on some sort of narcotic violation, and I believe he plead guilty to it, as I remember from Mr. Foster's testimony, were you aware that this matter had come up?

A. Yes, sir, I was.

Q. Did you have the occasion to discuss with Reagan the drug problem generally or the drug problem as it might apply to him specifically?

A. Yes, sir, I did. I talked to him about it a lots of times if I, practically all of the time that I was around him, I was always trying to talk to him about it—

Q. —Uh-huh—

A. —and he did admit being a user of marijuana, and to what extent, I really don't know. And I discussed this with him and he seemed to think that it was not any worse than alcohol, which most of the children seem to think today, that's, that that's the thing to do.

Q. Mrs. Blouin, that's argument. All right, well, when was the, when was it that you recall that [246] you became aware of any problem that Reagan might have had pertaining to the use of marijuana?

A. When?

Q. Well, I will put it another way—how long did this go on?

A. Well, I really don't know because I, when he was first arrested for marijuana, that was the first time that I was ever aware that he could have been using marijuana because he didn't have, he didn't act any different than he had always acted and I couldn't, I couldn't tell when he was on marijuana.

Q. Uh-huh.

A. And the first time that I knew anything about it was when he was arrested.

Q. All right, I believe that is, just to reflect back, that was in '67?

A. '67.

Q. Just to push your memory a little bit.

A. Yes.

Q. As a—were you able to determine how it was that—well, strike that. You have, you have described Reagan as being an obedient child at home, with whom you had very good, a very good relationship and who, apparently, enjoyed [247] a good relationship with his adopted father. And I believe you mentioned to us your, the fact that he was employed, and did Mr. Logue assist him in getting employment?

A. Yes, sir, but there was a few times that he got his own job.

Q. All right, now what about Reagan as far as his school, did he go to school regularly?

A. Yes, sir, he did.

Q. I understand from some records that have been provided me here by the Government lawyer, his grades were not the best in the world.

A. No, sir, they weren't.

Q. Had his grades dropped off in school, or were they, I believe the record is going to show that he

graduated about four hundred and eighty-three out of five hundred and eighty-five in the graduating class, which put him in the bottom quarter of his graduating class. Were his grades always in the lower part of the class, or was there ever any time, say before he started using marijuana, or got involved with, with this drug problem that he had, that his grades were any different, if you recall?

A. Well, I am sure they probably were, but if I [248] remember correctly, his average was about a "C", when he entered high school.

Q. I see, all right—

A. —I mean going through high school; he made "A's" and "B's" in grade school, but the best I can remember, he fell to about a "C" when he—it seems to me like his report card would be all "C's".

Q. All right, now how about, you mentioned that he read a lot?

A. Yes, sir.

Q. What would he read, do you know what, what books he read?

A. Oh, books from the library, he belonged to the library, and he would read books, he read alot on psychology.

Q. I understand from talking to Mr. Logue, who will testify also, that he read the Bible a great deal.

A. Yes, sir, and Bible Aids, or anything pertaining to the Bible.

Q. When you found out about this drug problem that he had, or at least his arrest for it, had you had any inkling before that that Reagan was involved in anything of that sort?

[249] A. None whatever. It was the furthestest from

my mind, he had never even, it never even occurred to me that he might be using drugs. There sure wasn't any sign of it at home, I mean in his actions, or the way that he was going about things, it didn't show up. I didn't notice a thing different.

Q. Up until the time of his death, and at the time of his arrest, did you visit him in jail, Mrs. Blouin?

A. (No answer)

Q. I'm talking about his last arrest in May of 1968, I think the records shows that he was arrested on May the 22nd.

A. No, sir, I tried to, but they wouldn't let me see him.

Q. All right, but you did, I believe, see him at the hospital?

A. Yes, sir, I saw him in the hospital.

Q. All right, and that was at the emergency room?

A. No, sir, I didn't see him in the emergency room; I saw him up on seventh floor.

Q. All right, you did not get to the hospital in time?

A. In time?

[250] Q. In time to see him in the emergency room?

A. No, sir, I didn't.

Q. All right, did you have any conversations with any of the Marshals or people connected with the guarding or having custody of Reagan at that time?

A. Yes, sir, I did, and that was, oh, well, I didn't have, have it the first night, I didn't talk to them at all, but I talked to them when they came to the hospital to take Reagan back to the jail, and I was begging them not to take him.

Q. By him, you mean the Marshal, or the gentleman who was—

A. —Yes, sir, the Marshal.

Q. Who was, had come after Reagan?

A. Yes, sir, that come to the hospital and got him.

Q. Do you recall why you asked the Marshal not to take him back to the jail?

A. Yes, sir, because I had been informed by Dr. Gwin that they were, that they were there to get Reagan, and I was pretty upset about it, and as soon as they got to the hospital, why I started beggin' and tellin' them that I was afraid Reagan would do somethin' to himself, [251] and not to take him, to leave him there.

Q. What did you base that opinion on, that you were fearful for Reagan's life?

A. Because of his previous attempt at suicide and what the doctor had said, on what Dr. Gwin had told me, that he was mighty afraid for him to go back to jail, he was afraid he would do somethin' to himself, and I was, too, I mean I knew, I knew the condition that Reagan was in, and it was real obvious that he didn't even know he was alive really, then.

Q. All right, were you able to talk to Reagan at all?

A. Yes, sir, I could talk to him some, but he didn't really comprehend, not, I mean he was real groggy and real fuzzy, and his eyes were real fuzzy lookin', and they, his eyes wasn't clear, and he kept—

Q. —Did he recognize you?

A. Yes, sir, he did. In fact, he asked me if I would bring him some banana pudding.

Q. All right, that was there in the hospital?

A. Yes, sir.

Q. What was his conversation, did his conversation make sense?

[252] A. Some of it did.

Q. All right, are you all right?

A. Yes, sir, it's just that I was thinking about that, that that was the last time I saw him. (Witness crying)

Q. I'm sorry I have to do this, Mrs. Blouin.

A. That's okay.

Q. Now, let me ask you just a few more questions about that—did you, did you say you did ask the Marshal not to take him back and you explained why?

A. Yes, sir, I did. I begged him, in fact, I didn't just ask him, I was pleading with him.

Q. And was this before he took Reagan out of the room or while he was taking him out, or when?

A. Well, I'm pretty sure that he was probably having to push me off of him, because I was beggin' him and tryin' to talk to him some more, I was tellin' him not to take Reagan, and I think I followed them into the room, and when they lifted Reagan up off of the floor why—

Q. —You say there was more than one?

A. Yes, sir, there was two of them.

Q. And then they took him off?

A. Yes, sir.

[253] Q. Okay.

Mr. De Anda: I pass the witness, Your Honor.

### CROSS EXAMINATION

By Mr. Pain:

Q. You were pretty close to Reagan, were you not, Mrs. Blouin?

A. Yes, sir, we were very close at the time of his death.

Q. And prior times as well?

A. Yes, sir, we was.

Q. From the time he was a small child on up through—

A. —Yes—

Q. —Junior High School and so forth?

A. Yes, sir, we have been close.

Q. Did, I think you testified that he didn't give you much trouble at home.

A. No, sir, he didn't, surprising as it may be, he really didn't. It seemed that every time he got in trouble, it was something big rather than small things that a child usually does at home.

Q. Uh-huh, and possibly because of the fact that [254] he didn't give you much trouble at home, you were rather surprised at the subsequent trouble that he did get into with other people, is that correct?

A. Yes, sir.

Q. Now you married Orval Logue in about 1958?

A. Yes, sir.

Q. And you married Mr. Blouin in 1970, is that correct?

A. Yes, sir.

Q. Have you had other marriages?

A. Yes.

Mr. De Anda: Your Honor, I'm going to object to this unless it is relevant to the matters before us, which I don't believe it is.

Mr. Pain: Well, I think it might be an indication of, of, would be relevant to the atmosphere of the



upbringing of Reagan Logue, and I think it would shed some light upon his general family background and atmosphere. He went into the family background atmosphere.

Mr. De Anda: I have no objections if it's during Reagan's lifetime, but I [255] would not, I wouldn't, I don't believe the question was confined to that.

The Court: Any thing prior to her marriage to Reagan's father, I don't think, I don't think, I think that would not be pertinent.

Mr. Pain: Well, Your Honor, don't you think it might be pertinent to prior to his real father?

The Court: That's right, prior to her marriage to his real father, I don't think that would be pertinent after that, but I think that would be.

Mr. Pain: What was Reagan's, Reagan Logue's natural father's name?

The Witness: Eddie—

Mr. De Anda: —Your Honor, just a minute, unless it is relevant, and I don't really believe that it is, and I, I, I don't see any point in bringing the matters up, matters up that might effect the people that are not going to be, that are not going to be in any way helpful to the State, to the Government's case, unless he maybe plans to call him or something. If [256] he does, of course, I can disclose his name to you.

Mr. Pain: Well, I am inquiring as to—

The Court: —I'm kinda puzzled as to why his name should be withheld unless it is going to effect someone.

Mr. De Anda: All right.

The Court: Adversely at some point.

Mr. De Anda: All right, sir, I withdraw my objection.

By Mr. Pain:

Q. What was Reagan Logue's natural father's name?

A. Eddie Bryant.

Q. Eddie Bryant?

A. Uh-huh.

Q. When were you married to him?

A. In '48, I believe 1948.

Q. 1948?

A. Yes, sir.

Q. And Reagan was born the following year?

A. Yes, sir.

Q. And how long did you live with Eddie Bryant?

A. About six years, or seven years.

Q. About 1954 or '55, 1955 you separated?

A. No, it was longer than that. I don't believe [257] we separated until '56, or the first part of '57; it might have been eight or nine years, I really have forgotten.

Q. Were you separated for a length of time prior to the divorce?

A. Not too long.

Q. Do you recall when you were divorced from Eddie Bryant?

A. I believe it was '57, February of '57, or '58.

Q. Did you have another marriage a couple of years ago?

A. It was annulled so it is really not classified as a marriage.

Q. But you did go through a marriage ceremony?

A. In Mexico, yes.

Q. And who was the man with whom you went through that marriage ceremony?

Mr. De Anda: Your Honor, again, I'm going to object to that unless there is, this has nothing to do with Reagan Logue and could not possibly have effected Reagan Logue in any way, shape, form, or fashion. This is what I really objected to, I don't see any point in going into all of these matters. They went into them on the [258] deposition and I thought it proper, that they might want to make an investigation, but unless, I don't see anybody on this witness list that would in any way relate to that matter.

Mr. Pain: Well, perhaps, Your Honor, if I can ask one more question it will clarify this. I will ask her if this marriage, or this ceremony occurred after Reagan's death, and if it did, I withdraw the question.

Mr. De Anda: Whether it did occur before or after Reagan's death—he was not present, was he?

The Witness: No, sir.

Mr. De Anda: This is what I'm getting at, Judge, I think it was a one-day matter, as it was developed in the deposition, and the Government, if the Government has something contrary to that, they might want to pursue it and it might be relevant, but—

The Court: —Did you get this information in the deposition?

Mr. Pain: Yes, sir.

[259] The Court: Well, the name doesn't, unless it has got something, some peculiar connotation, I don't see how, I don't see any reason to go into the name; in fact, the fact that she went through the ceremony, I think, I think that is pertinent.

By Mr. Pain:

Q. Where did Reagan graduate from high school?

A. Ray High School, W. B. Ray.

Q. You mentioned his doing some work as a boiler-maker during 1967, and I think that your testimony was that he would work for a week and then get a few days off and work for another week, that the work was not steady, is that correct?

A. Yes, sir, that's right.

Q. And how did he obtain that job, do you recall?

A. His father got the job for him.

Q. His father being Orval Logue?

A. Yes, sir.

Q. Did Reagan work after he graduated from high school?

A. Yes, sir, he worked some, that's when I was talking about. There wasn't too much work at the time, construction work, so when there would [260] be a job, well, Reagan would go out on it, but the best I can remember, that, probably the longest that he worked was a week at a time on those jobs and then he would be off, he'd be off maybe two or three weeks and he would pick up a few more days then.

Q. That was in 1968?

A. Yes, sir, before he died.

Q. How long did he live here in Corpus Christi in 1968?

A. Oh, well, actually he was only in Austin about a month, so he lived all of it here.

Q. Other than the time he spent in Austin?

A. Yes, sir.

Q. Where was it that he worked, or for what concern did he work after graduation from high school?

A. You mean the companies?

Q. Yes, ma'am.

A. I really don't know, but the union would, the union would have to supply you with that because he would go out with the union, I don't know the names.

Q. But he was not working as a boilermaker, is that correct?

[261] A. Yes, he was a boilermaker.

Q. Oh, he was?

A. But the boilermakers is a union and, and you see, Mr. Logue is the business manager of the union, and he can probably answer those for you; I don't have any idea of the name of the companies.

Q. Do you know what he was doing in Austin?

A. No, sir, not really. I think he worked there with, a week or so on a job as a boilermaker.

Q. What did he, what was the purpose that he told you that he was going to Austin for?

A. Well, he was going to go to school there in September or, well, he even talked about starting in, in the summer months, going to the summer session, the summer semester.

Q. So your knowledge was that he went up there to check into the possibility of going to school?

A. Yes, he was checking into it and he and Terry Martin, and there was quite a few of the boys from here, had gone to Austin.

Q. And that was your knowledge, that he was, he had intentions of enrolling at the University of Texas, is that correct?

A. Yes, sir, I knew that if he didn't in the [262] summer months, that he would in September. This was his plans, what he had talked about.

Q. Had you, you had never talked to any of the school officials at the University of Texas concerning what the scholastic requirements of entering would be?

A. No, I didn't.

Q. You weren't aware of whether or not he might be qualified to get in?

A. No, I didn't. I knew that he had, he had gotten several letters from several schools, now I don't remember just now which ones, and I know that he had took the test before he graduated from high school, and—

Q. —Do you know the results of that test?

A. I don't know. I did, but I have forgotten it.

Q. Do you recall if the results were good, bad, or indifferent?

A. Well, it was fair enough; he could get into college, I remember that.

Q. And how did you come by that information?

A. He told me, we talked about it.

Q. He told you what his test scores were?

A. It came back through the mail, they mailed it to him, and I remember seeing it, but I don't [263] know, I don't, I can't remember what it was.

Q. Uh-huh, but it was, it is your recollection that, that he told you those test scores were good enough to get him into the University of Texas, is that correct?

A. Yes, sir.

Q. Were you ever aware of Reagan ever sniffing glue?

A. No, sir, I wasn't, and I don't believe he was, ever.

Q. When was the first time that you can recall that Reagan got into trouble with any of the authorities?

A. Are you referring to what Mr. De Anda was talking about awhile ago, those cases, or are you going—

Q. —No, I am referring to the first time that you ever recall of him getting into any trouble with the law enforcement authorities.

A. You are talking about those, that's what I'm talking about, in 1962?

Q. Well, I'm asking you, do you recall that?

A. I just remember seeing it on the paper. I, I, that's probably about right, 1962 or '63.

Q. 1962 or '63?

[264] A. Uh-huh.

Q. Do you recall him ever getting in trouble in December of 1962, for running a forklift, I think it was, around a warehouse?

A. Yes, sir.

Q. What was the result of that, do you know?

A. I believe we paid the damages.

Q. To whom did you pay those damages, do you recall?

A. The people that owned the tractors.

Q. Do you recall how much those damages were?

A. No, sir, I don't. It don't seem like to me like it was very much.

Q. Do you recall another instance in about June of 1964 when he was, I think it was brought to your attention that he was picked up for disorderly conduct?

A. Yes, sir.

Q. Do you recall the details of that?

A. I believe that's when they opened the door to a beer joint there at Shell Center and said some bad words, he and some more boys.

Q. He and some other boys?

A. Yes, sir.

Q. Do you recall another instance in April of 1966, [265] where, I think, there was a theft of some sound equipment from the Ramada Inn, do you recall that?

A. Not from the Ramada Inn, I don't.

Q. Well, perhaps it was some other establishment in town, do you recall something like that?

A. Yes, sir.

Q. What occurred on that occasion, do you remember?



A. Yes, sir. He and some more boys took a, I believe it was, I believe some speakers on a P.A. system from the, from the Driscoll Hotel.

Q. Do you know what they did with those speakers?

A. Well, they had this band, and they were using them in the, in the band. Reagan played the drums, Reagan didn't have any need for them at all, he had the drums, but they belonged to some of the other boys, but Reagan was in on it, when they took the speakers.

Q. Didn't they bring them to your house?

A. Yes, sir.

Q. And did some police officers later come out and retrieve those goods from your house?

A. Yes, sir.

Q. Then I think you mentioned to Mr. DeAnda on direct examination that he was arrested in [266] February of 1967, for possession of marijuana?

A. Yes, sir.

Q. And at that time, I believe you testified, that that was the first time that you became aware of his involvement in any way with any type of drugs, is that correct?

A. That's correct.

Q. Do you know who he was, or which law enforcement agency picked him up for this possession charge? Was it the County or the City?

A. The City.

Q. Do you know what the charge was, do you recall the charge?

A. Possession of marijuana.

Q. Now this was in February of 1967, and if my memory of your direct testimony is correct, that

would be after—no, I'm sorry, that would be before you and Mr. Logue were divorced, is that correct?

A. Yes, sir.

Q. You were divorced in August of '67?

A. Yes.

Q. Were you living with Mr. Orval Logue during the time that Reagan was arrested the first time for marijuana?

[267] A. Yes, sir.

Q. And where were you living, do you recall?

A. 425 Longview West.

Q. Following that particular arrest, didn't, or did Reagan take an overdose of sleeping pills?

A. Yes, sir, he did.

Q. How long after the arrest did this occur?

A. It must have been the third day, they arrested him one night and then he was out on bond the next day, and then the next day he went to, back to school that morning, and then he, he went to school, well, he found out that they wasn't going to let him run, or in school for the rest of that year, so I was at work when he came home and he found my sleeping pills and took the bottle of pills.

Q. Did you take him to the hospital?

A. Yes, sir, when I came home from work, well, I found him and he was unconscious and I called an ambulance.

Q. How long was he in the hopsital that time, just overnight?

A. No, sir, he was in there, I believe it was two days.

Q. Two days?

[268] A. I believe so.

Q. Do you know Mrs. Dorothy Roby?

A. Yes, I do.

Q. Now I believe on that occasion, when he went to the hospital, that you went up there with Reagan, weren't you, at the hospital?

A. Yes, I was.

Q. Then she came up there and was visiting with you for two or three hours there that night, didn't she?

A. Yes, she did. She was a woman psychologist tester.

Q. Did Orval Logue come up to see Reagan during this hospitalization?

A. No, he wasn't allowed up because it was late at night. You see, I was, you see, Reagan was in intensive care and I was just lucky to, that they let me stay. They let me sit outside the room, and when they turned out the lights, well, Mrs. Roby was still there, and really she wasn't supposed to be there at all, there in intensive care where I was because she wasn't in that part of the family, so they locked all of the doors at night, and when Mr. Logue came up, well, it was real late when he found out about it, he [269] was at a meeting, and when he came up, they wouldn't let him in that night.

Q. Was Reagan in the hospital the following day?

A. Yes, sir.

Q. All day the following day?

A. Yes, yes, sir.

Q. And were you with him at that time?

A. Well, I was outside of intensive care.

Q. Did Mr. Logue come up there then?

A. Yes, sir, he was there, we could see him every,

I think it was fifteen minutes in the morning and fifteen minutes in the afternoon.

Q. So you had limited visiting privileges with him?

A. Yes, sir.

Q. Were you aware of a charge along about April of 1968 against Reagan for automobile theft?

A. Well, I am, yes, sir, I was aware of it, but it wasn't an automobile theft, really, as it turned out. It turned out to be that a girl had loaned, there was three boys, Reagan and two other boys, and one of the boy's girlfriend loaned them the car to go to the, to the beach, and she didn't want her parents to know that she had loaned her boyfriend the car. So [270] she told them she didn't know where the car was, and the parents reported it stolen. Of course, they picked them up right away on the beach and found the car, and why the boys, they didn't know what was going on, and by the time they got the boys down to the jail, well, I was there, and then by that time the girl and her parents was there, you know, and the girl told them that she had loaned the car to her boyfriend.

Q. Uh-huh, was Reagan charged with this?

A. Well, there was no bond. We didn't make no bond or nothin'. I didn't even know that they went ahead and charged him with it, because they just let them out of jail.

Q. I see, so you don't know for sure whether or not there were formal charges?

A. They never did anything about it; nobody ever said anything. I thought that was the end of it.

The Court: Is this a witness?

Mr. Pain: Sir? No, that is not any witness.

Mr. De Anda: No.

By Mr. Pain:

Q. When Reagan was taken to the hospital for the cut on his arm, you did see the bandage on his [271] arm, did you not?

A. Yes, sir, I did.

Q. Did you see the type of bandage that it was?

A. I just remember that it was gauze and I didn't pay any particular attention to it.

Q. It didn't enter your mind that he might do with it what he did with it?

A. No, not with the bandage, I didn't think of that.

Mr. Pain: We pass the witness, Your Honor.

### REDIRECT EXAMINATION

By Mr. De Anda:

Q. What is your age, please, Mrs. Blouin?

A. I am thirty-eight.

Mr. De Anda: Your Honor, I believe that's all I have of this witness.

The Court: You may step down.

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WITNESS EXCUSED

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[272] Mr. De Anda: Your Honor, I want to offer into evidence Plaintiff's Exhibit No. 5, that has already been marked, which is a Contract for Service between the Defendant and the Nueces County Jail or Nueces County, whereby, and this was provided to me by the Government,, Judge—

Mr. Pain: —No objections, Your Honor.

The Court: It will be admitted.

Mr. De Anda: I will call Orval Logue to the stand, pardon me, Judge—

The Court: —Yes, sir, go ahead.

Mr. De Anda: I will call Orval Logue.

[273] ORVAL LOGUE,

was the next witness called on behalf of the Plaintiffs, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

#### DIRECT EXAMINATION

By Mr. De Anda:

Q. Your name is Orval Logue?

A. Orval Harris Logue.

Q. How old are you, Mr. Logue?

A. Fifty-seven.

Q. And where do you live?

A. 425 Longview West.

Q. Now you are married, sir?

A. Yes, sir.

Q. You were formerly married to Alice Marie Blouin?

A. Yes, sir.

Q. And I believe it is undisputed that you were the adopting father of Reagan Logue?

A. Yes, sir.

Q. The deceased?

A. Yes, sir.

Q. We have gone into everything else, I guess we [274] can—let me ask you something while it is on my mind because, I believe, the Government forgot to mention it among some of the acts that they mentioned in this, that they referred to there in the interrogation and in the pleadings—there is a, a malicious mischief charge, I believe that's what it was, that we didn't go into with Mrs. Blouin, involving Reagan, do you know anything about that?

A. About what?

Q. About a malicious mischief charge that, that means he broke something, or tore something up, or did something.

A. Let's see, that was, oh, that was, the first time was because he was throwing some eggs at a place, that was a mischief charge, as I understand it.

Q. Throwing some eggs, you say?

A. Yeah, him and some more kids, you know, they was throwin' eggs of a night.

Q. This was back—

A. —And the other kids—

Q. —This was back in '62, that would have made Reagan about ten years old?

A. Yes, sir.

[275] Q. I take it?

A. Something like that.

Q. I'm sorry, about twelve.

A. About twelve years old, yeah.

Q. If he was eighteen in 1968, yes, I'm doing some heavy math, Your Honor.

A. Yes, yes.

Q. I'm sorry, Mr. Pain said thirteen, so we will, I will accept that. And then this business about the bulldozer, or the forklift, that also happened when he was about thirteen years of age?

A. Yeah, that was about, oh, about, I'd say, not, not long after this, this first incident.

Q. All right.

A. They, him and—

Q. —Well, did—

A. —Yeah, him and—

Q. —Oh, you answered me, I believe.

A. Oh, yes, yes, yes, uh-huh.

Q. Mr. Logue, you adopted Reagan when?

A. I thought it was around, around 1961 or '62, '3, somewhere along about like that.

Q. Did you have a good personal relationship with, with Reagan?

[276] A. Yes, sir.

Q. Insofar as his personal contact with you, and we know about, we won't go into these other matters, but as far as his personal contact and relationship with you, did you have any problems with him either



as a, I will say this in this sense, like giving you back talk, or fighting with you, or that sort of thing?

A. No, no, no, no, sir.

Q. Personal things?

A. No, sir, no more than just the usual, I mean we never had no problem like that. He, he thought a lot of me and we were real close.

Q. All right.

A. And I thought a lot of him.

Q. Mrs. Blouin, I think that we, I have introduced during the course of Mrs. Blouin's testimony some W-2 Forms for 1967. In 1968 did Reagan work following his graduation from school?

A. Let's see, I—

Q. —I asked you to look those records up for me.

A. Yeah, he, he, I believe he worked in '68.

Q. All right, now who was, who was that for, who did he work for in 1968?

[277] A. Let's see—that would have been for Berry Contracting, I believe, I'm not certain, that's just—

Q. —Well, Orval, now you gave me some other name in the office this morning and you said that he made Three Hundred and Fifty—

A. —No, no, I said Sixty-six.

Q. Oh, I'm sorry. All right, I thought you were wrong—

A. —All right—

Q. —that's in 1966?

A. He worked for Sapulpa Tank Company at Reynolds Metals Company.

Q. Would that have been during the summer?

A. That would have been during the summer.

Q. And what, what, did he, you didn't, didn't have

any records of his earnings, but you had a record of the hours he worked?

A. Well, let's see, he worked three hundred and—I've got it somewhere here.

Q. You told me three hundred and forty-three hours.

A. Yeah, yeah, yeah, three hundred and forty-three hours.

Q. Is that right?

A. Three hundred and forty-three hours and his rate [278] of pay was Four Sixty an hour.

Q. All right, so that would have been, multiplying that out, he would have earned Fifteen Hundred and Seventy-seven Dollars and Eight Cents in 1966?

A. Yes, sir.

Q. That would have been during the summer months?

A. Uh-huh.

Q. There is some evidence that he was interested in going to college, whether or not he would have gone to college, but now were you in a position to assist him with employment if he either, if he couldn't have gone to college because he just couldn't have made it scholastically, or just because he didn't want to?

A. Yeah, I was in a position to help him, to see him through college.

Q. All right, Mrs. Blouin testified that Reagan, as a matter of course, would let either you or her, turn his money over to you, the money that he earned?

A. Yes, sir.

Q. And then, as I understand it, you would use that to pay for whatever expenses—

A. —Yeah—

[279] Q. —that would be incurred?

A. Yes, sir, I financed him....

Mr. Pain: Your Honor, that's leading—

The Court: —Yes—

Mr. De Anda: —I think I am leading, Your Honor, I plead guilty if that's what he was going to say.

Mr. Pain: Yes, I was.

Mr. De Anda: All right.

By Mr. De Anda:

Q. Were you home when Reagan was arrested on May the 22nd of 1968?

A. No, sir.

Q. The address given in this record, I believe that would indicate that that would be your house?

A. That would be my house, but I was not present. I was, I was, I was out, out of town on business.

Q. All right, was Reagan living with you at that time?

A. Yes, sir.

Q. Did you have, did you ever have the occasion, Mr. Logue, to, to discuss with Reagan the problems that we have, that is in the record, and you have been here listening to all of this, the fact that he had been involved in some [280] marijuana case, or narcotics case in 1967, I believe, did you ever have any discussion with Reagan about that?

A. Many discussion with him about it.

Q. And did he admit to you whether or not he had actually used marijuana?

A. Yeah.

Q. What did you notice, apart from his admission and the fact that he was arrested for it, which I'm sure called it to your attention, had you seen any change in Reagan's behavior, or his attitude towards you, or toward his mother, or anyone else in the family, that would put you on guard or on notice that anything like this would happen?

A. None whatsoever.

Q. Did, Mr. Logue, when Reagan was arrested, when did you first find out about his arrest, now I'm talking about the one on May the 22nd, 1968?

A. I found out whenever I returned home.

Q. All right, when he was taken to the hospital a couple of days later, did you go to the hospital?

A. Yes, sir.

[281] Q. Where were you when you found out about that?

A. I was at home whenever, whenever I found out about it.

Q. How did you find out?

A. Sheriff Mitchell called me and told me that Reagan had hurt himself.

Q. All right, so you went on to the hospital?

A. Yeah, I went, I went on to the hospital.

Q. From looking at Reagan there, did you see him in the emergency room?

A. Yes, sir.

Q. And I take it that you arrived there before Mrs. Blouin did?

A. What?

Q. Before his mother did?

A. Yes, sir, yes, sir, myself and my wife, we went right on over to the hospital, myself.

Q. I see, now let me just ask you this question—how, how did Reagan get along with your present wife, was their relationship all right, did you have any problems?

A. Good.

Q. And so both you and she went over to the hospital when you found out that he was over there?

A. Yes, sir.

Q. Did you get a chance to talk to Reagan while he was in the emergency room, or did you get a chance to see him?

A. Well, I got a chance to see Reagan, but he wasn't, you know, there was no conversation about anything. He was just real, well, you know, low, you know, from loss of—

Q. —All right—

A. —I presume, loss of blood.

Q. There's been some testimony in the record, I believe, from Dr. Gwin that Reagan was hallucinating, that is, he was speaking of God and the Angels, and this sort of thing—

A. —That's right.

Q. Did you hear anything like that?

A. Yeah, I sure did, that's right.

Q. Did you attempt to talk to Reagan while he was in the emergency room?

A. (No answer)

Q. Did you try to talk to him?

A. I just told him that I'd try to help him there all I could, you know, and, you know, just to relax.

Q. You were trying to reassure him?

[283] A. Yeah.

Q. Is that what you are telling us?

A. Yeah.

Q. But you had no lengthy conversation or even a short conversation with him, other than that?

A. No, no, sir.

Q. All right, did you talk to the doctor there at the emergency room?

A. Yes, sir.

Q. Was Mr. Foster also over there?

A. Yes, sir.

Q. Did he get there before you did or after?

A. We arrived there about the same time, I think.

Q. All right, were you present in the hospital when, on May the 24th, when Reagan was removed from the hospital by Mr. Bowers and taken back to jail?

A. No, sir.

Mr. Bowers: Judge, I hate to object to this, but Mr. De Anda, I don't believe, has asked a non-leading question in the last few minutes, and I think perhaps a narrative question and answer type of examination would be appropriate in this particular case.

[284] Mr. De Anda: Well, I didn't really think as far as the boy's removal from the hospital there, that there was anything in dispute about it, in deference to the objection.

The Court: I think you have been leading a little bit.

Mr. De Anda: All right, sir.

By Mr. De Anda:

Q. Were you present when, when your boy was removed from the hospital?

A. No, sir.

Q. Where were you at that time, assuming that it happened in the afternoon of the 24th—

A. —I was, I was at, at my office.

Q. All right, when did you first find out that Reagan was removed from the hospital?

A. I, I, I found out that he was, before he was removed from the hospital, his mother called me and told me that they were removing him from the hospital back to, to the jail.

Q. What did you do when she, when she told you that?

A. I went to, I went to tryin' to get a hold of, ahold of, ahold of the attorney, Mr. Foster.

[285] Q. Did you succeed in reaching him?

A. I, I don't believe before they, I don't recall whether I was, I was real excited about it, you know, and I don't remember just whether I got him, in touch with him before or not. I—

Q. —All right, now after you received this phone call from Mrs. Blouin, and you tried to call Mr. Foster, what did you do next, Mr. Logue?

A. Well—

Q. —If anything?

A. I, I, I did also call and asked Sheriff Mitchell to please have, have him under guard that, that, so he couldn't, wouldn't hurt himself.

Q. You had a conversation with Sheriff Mitchell or someone else?

A. With Sheriff Mitchell and he assured me that there, that this would be took care of.

Q. All right, was this the same day?

A. It's the same day.

Q. All right, that would have been May the 24th, then, if that was the day he was removed from the hospital?

A. Yes, sir.

Q. Now after that conversation with Sheriff Mitchell, did you do anything else with reference to [286] Reagan's being in jail?

A. Not that I recall.

Q. All right, how about the next day, the 25th, which was the day Reagan died, did you do anything that day?

A. The next day in the afternoon, I went to the Courthouse to see Reagan.

Q. You mean the Nueces County Courthouse?

A. Yes, sir.

Q. That's where the jail is?

A. Yes, sir.

Q. All right, and did you get to see him?

A. No, sir.

Q. What time was it that you went down there?

A. I'd say this was about, oh, 2:00 o'clock, 2:30, something like that.

Q. Why were you unable to see him, do you know?

A. Well, I was refused by the, by the desk Sergeant, that, that, that he, that he was, he couldn't admit me to the, to the upper, up to the stairs to the jail, that that was his orders, you know, that there would be no visiting other than on visiting hours.

Q. All right, so you did make an effort to see him



that afternoon, but you were denied it; their [287] regulations prevented you from seeing him, or at least that's what you were told?

A. Yes, sir.

Q. And after that, what did you do?

A. Well, I went on back to the, to home.

Q. All right, and when were you next contacted, or did you next contact anyone with reference to Reagan?

A. The next contact I got was a call from, I don't remember who called me, that Reagan was dead.

Q. That same day?

A. That same day.

Q. Mr. Logue—

Mr. De Anda: —I want to offer into evidence, Your Honor, Plaintiff's Exhibit No. 4, which is the funeral bill of the Clifford-Jackson Funeral Home, a copy of which I provided with Counsel, and as I understand it, the Government will stipulate that this is reasonable and necessary and the customary bill for the services, for the funeral services rendered to Reagan.

Mr. Pain: That is, that is correct, we will stipulate to that, we have no [288] objections to it.

Mr. De Anda: And the bill is in the total amount of One Thousand, One Hundred and Sixty-four Dollars and Fifty Cents, Your Honor.

The Court: It will be admitted.

By Mr. De Anda:

Q. Concerning Reagan's work, Mr. Logue, did you

ever receive any complaints, or know of any complaints pertaining to the manner in which Reagan worked on the various jobs that he worked on through the, through your help, or through the union?

A. No, sir, no, no complaints.

Q. I notice that there are a number of jobs that he held one summer when he worked as a boilermaker. Well, let me ask you this—strike that question—I've got a number of wage statements here for 1967 from Chemco, Inc., Wilson Construction Company, W. H. Hammons, Highland, Inc., Factory Construction Company, and Berry Contracting, Inc., in 1967.

A. This Hammons job, that was a carpenter's helper, I think he was, that's what he was workin' at there, he, he got that job himself.

[289] Q. I see, now the fact that these jobs were numerous, is that unusual, or is that customary in the boilermaker work?

A. That's customary in the boilermaker work. We may, we may, maybe a job might last five days, or three days, or two weeks, it's on a shut-down, you know, when they shut down a refinery, or—

Q. —I see, so there would be, is there anything that you would consider bad from a standpoint of either performance or attitude, insofar as it relates to the fact that these were short jobs?

A. No, sir, they were just, just short scheduled jobs. Now the job at Reynolds, where he worked that summer, that was in, was a construction job, they was buildin' these steel tanks, big silo tanks, you know, and it is rigid work that I'm talking about, and he stayed through there.

Mr. De Anda: We pass the witness, Your Honor.

The Court: All right.

[290] CROSS EXAMINATION

By Mr. Pain:

Q. What is your occupation now?

A. I'm Business Manager for the Boilermaker Union.

Q. That's Local what number?

A. 577.

Q. And was that your occupation during May of 1968?

A. Yes, sir.

Q. And how long have you had that position?

A. I've had that, let's see, since 1949.

Q. You have been Business Manager?

A. September of 1949.

Q. Since that time you have been the Business Manager of the Boilermakers Union?

A. Yes, sir.

Q. What, what, what is, what do you do on your job?

A. What is my job?

Q. Yes, sir, what do you do?

A. I, I have thirty-nine counties that I police, you know, for work, you know, so I dispatch the employees, the boilermakers, and, oh, negotiate contracts, and if there is a jurisdictional problem, problems between the various crafts—

Q. —As far as the members of the Boilermakers Union are concerned, do they have to come through you to get jobs?

[291]

A. Well, they come through, yeah, that's right, through the, through the boilermaker office.

Q. Which you are, you run?

A. Yeah, I am the Business Agent, yeah, we have officers—

Q. —So every—

A. —an executive board.

Q. Would it be accurate to say on your work days you will have a number of union employees or men looking for jobs and you place them in these jobs, is that correct?

A. Yes, sir.

Q. You farm them out to the different construction companies?

A. Yes, sir.

Q. And the ship companies, is that right?

A. Yeah, yeah. No ships, shops, shops and, and field construction.

Q. About how many men per day come through you that you place, that you give them work?

A. Well, there will be, there will be, it varies, it depends on how the work, the work is. Right now it's been slow.

[292] Q. It picks up in the summertime, doesn't it?

A. Not necessarily, I mean, I mean it just varies.

Q. You don't have a particular busy season?

A. Not no, not particularly, no, huh-uh.

Q. I see.

A. It's just whatever these, these refineries, you know, when they are building units, you know, you know, in addition to their plants, and new plants, and so on.

Q. So if a, if a union member wants work, he has got to go through you, then, right?

A. Well, yeah. Not necessarily, I've got a, my secretary can dispatch, you know.

Q. But she works under you?

A. Yeah.

Q. Are there certain requirements to be members of the union?

A. Yeah, there is specialties, welders, they certify, you know, I am certified, and if it requires a certified welder, well—

Q. —Are there any requirements of age to be a member of the boilermakers union?

A. Sixteen.

Q. How did Reagan get to be a member of the union, that was through you, was it not?

[293] A. Reagan never was a member of the boiler-makers.

Q. Oh, then it is not necessary to be a member of the boilermakers union to get work through you, is that correct?

A. That's right, to work, and, you know, and if, if you are qualified and why not, you can be dispatched to the job.

Q. Now you are a member of the union, are you not?

A. Yes, sir.

Q. If, say, for example, twenty-five men come to you on a particular day, or come to your office wanting work, and twenty of those are union men, do you place the union men first?

A. Not necessarily, not necessarily.

Mr. De Anda: Your Honor, we are not trying a labor relations case, and I don't see the relevancy

of all of this at all, what it has to do with anything in this lawsuit.

Mr. Pain: I'm leading up to something that I think would be quite relevant, Reagan's work and how he got it.

Mr. De Anda: Well, he got it through his father, that's been the testimony, and I don't see the relevancy of this. At least [294] the boilermaker work I am sure he got through his father, that's been the testimony, and I don't see the relevancy of what preference he gives to other people has to do with this case, if he gave any kind of a preference, or how he would go about choosing between a union and non-union man—

Mr. Pain: —It's leading up to the fact that might be relevant, if he did give any preference to his son—

Mr. De Anda: —I hope he did give preference to his son. I don't see the relevancy of it at all, to any issue in this case.

The Court: Well, I'm going to go ahead and let him put it in.

Mr. De Anda: All right, sir.

The Court: The objection is overruled.

By Mr. Pain:

Q. I think you testified that in 1966 that Reagan worked about three hundred and forty-three hours

at Four Dollars and Sixty Cents an hour, is that correct?

A. That's correct.

[295] Q. And that was for summer work in 1966?

A. Right.

Q. And he got that as a result of the fact that you were in a favorable position?

A. Well, I will, I will say this—that I, that I dispatched him to the job.

Q. Uh-huh.

A. Uh-huh.

Q. Now in the summer of 1966, how old was Reagan?

A. He would have been sixteen, I believe, or—

Q. —Was he old enough to do that type of work?

A. Yes, sir, he made, he made an excellent hand.

Q. Well—

A. —There was, it was lots of climbing to it, you know, and, and, and, oh, there was, there was various different phases of it, you know.

Q. Some of that work that you let out to him, as reflected on those 1967 W-2 Forms, some of it was pretty hard work, isn't it?

A. Yeah, it, it wasn't, well, let me see, it's pretty hard.

Q. It involved use of hard labor, does it not?

A. Yeah, you have—

Q. —Manual labor, I mean?

A. Manual labor.

[296] Q. Well, for a person to do manual labor in Texas, doesn't he have to be eighteen years old?

A. Well, I didn't, I never—

Q. —You weren't aware of that?

Mr. De Anda: Your Honor, I am not either, there ain't such a law, and I'm going to object to that, first of all, there is no law that says you can't do manual labor under eighteen, No. 1; No. 2, again, because it is not relevant to any issue in the case. There would be, I must say that this is, is probably favorable to me, to show that Reagan would have the advantage of, of being able to have sources of work that maybe others might not have, if this is the inference that we get from this line of questioning, but, but I don't see the relevancy of, of whether or not he was eligible or ineligible back when he was sixteen years old to any issue before us now, in that all we are showing is potential in the future, that's the only relevancy we have here.

The Court: My recollection, Mr. De Anda, is that most anything that a person does in [297] this kind of a case, under this Statute under which this suit is brought, is relevant with regard to what the future might hold as far as contribution and that sort of thing is concerned.

Mr. De Anda: Yes, sir, I agree with that, but I think, Judge, that where, whether he was working way back about 1966, and whether he should or should not have been working, or he was working in violation of some law which doesn't exist, but if it did, I don't think it is relevant now to any issue before us, the fact that he did work.

The Court: Well, as long as he had a preference, I think—



Mr. De Anda: —All right, sir.

By Mr. Pain:

Q. Did you, did you place Reagan in some work in 1968?

A. In '68?

Q. Yes, sir.

A. I don't, I don't, I didn't look that up there. I don't believe, I don't recall.

Q. You don't think you did?

[298] A. Well, I don't, I don't, I don't remember. If I did, it would have been just on the turn-around or something like that, you know, it was short.

Q. You gave him quite a bit of work in 1966 and 1967, you remember that, don't you?

A. Yes, sir.

Q. But you don't remember if you gave him any work in 1968?

A. Let's see, I believe I did work him in '68 for Berry Contracting, but I'm not certain.

Q. But it was not as much as in 1966 and '67, is that correct?

A. Not as much, it was a slow year, you see.

Q. It was nowhere near the Fifteen Hundred Dollars that he earned in '66?

A. No, I wouldn't think so. It could have been but—

Q. —Now on the night or the evening that Reagan cut himself, I think that was May the 23rd, 1968, you went to see him in the emergency room?

A. Yes, sir.

Q. Of Memorial Hospital, that's correct?

A. Yes, sir.

Q. And you stayed there with him for about, about [299] thirty minutes, would that be accurate?

A. I would say that would be about accurate.

Q. And you had only a short conversation with him at that time?

A. Yes, sir.

Q. Did you go back to see him while he was in the hospital for that admission?

A. Well, I was, I was there, there, there the night that, that, that night, you know.

Q. You went up to the floor where he was?

A. I went up to the floor where he was.

Q. Did you go in to see him, into his room?

A. No, let's see, I don't believe I did, I don't remember it, but I don't believe I did.

Q. You just went up to the floor where he was and then left without seeing him, is that correct?

A. I seen him, you know, through the, through the glass.

Q. Through the window?

A. Yeah.

Q. But you did not speak to him?

A. I don't remember whether I did or not.

Q. Now I think that you testified that you telephoned Sheriff Mitchell when you found out that he was going back, or he might be going back to [300] the jail from the hospital, that you telephoned Sheriff Mitchell, right?

A. Yes, sir.

Q. And that was for the purpose of—

A. —His security.

Q. Right, to see that he was going to be treated right up there and watched?

A. Yes; sir.

Q. And was this done upon advice of counsel?

A. Well—

Q. —Did Marvin Foster advise you to do this?

A. No, not at all. I was just real concerned about him, about him agoin' back, you know.

Q. So you just up and did it?

A. Yes, sir.

Q. And then you later went to the Courthouse, the County Courthouse where the jail is to see him, and they wouldn't let you in, right?

A. Yes, sir.

Q. And the reason for that was it wasn't visiting hours, is that correct?

A. It was, it was on, oh, visiting, visiting hours, it wasn't visiting hours.

Q. I mean that's the reason they would not let you see him?

[301] A. That's the reason, yeah, so I just left, I just left some change, some money there for him to buy him candy or whatever he wanted and needed, and I had some clothes there, you know, for him.

Q. When was Reagan born?

A. In 1943—

Mrs. Blouin: —No—

By Mr. Pain:

Q. —do you remember the date?

A. No, I wouldn't be sure about that, the date was December.

Q. Do you remember the day he died?

A. The date was December the 14th.

Q. Do you remember the date that he died?

A. Oh, the date that he died, that was May the 25th, I believe it was, wasn't it?

Q. What year?

A. Of '68.

Q. Do you remember taking your deposition last May, I think it was, or last March?

A. Yes, sir.

Q. And you testified under oath at that time?

A. Yes, sir.

Q. And I think at that time you were asked when Reagan died and you didn't remember, but you [302] have refreshed your recollection since that time, have you not?

Mr. De Anda: Your Honor, I'm going to object to that, that's not, I don't think there is any argument about when Reagan died, and if he is trying to prove this man has a poor memory, I will stipulate he has a very poor memory, if it will help shorten this thing.

Mr. Pain: It is going to be relevant, Your Honor, I think.

Mr. De Anda: Well, I will stipulate that Mr. Logue has a terrible memory, Judge.

Mr. Pain: It is not his memory I'm concerned about, Your Honor.

The Court: Well—

Mr. De Anda: —All right, go ahead, carry on.

The Court: I will let you go ahead. I don't see the

relevancy of it either, but if it turns out not to be, we will strike it.

By Mr. Pain:

Q. Now you knew that Reagan wasn't, he wasn't setting the world on fire with grades in school, [303] he was passig?

A. He was passing, but he and his mother, they went over that pretty close there, you know, his grades, and you know—

Q. —You weren't too much aware of what his grades were in school, is that correct?

A. No, not too much.

Q. Uh-huh, where did he go to high school?

A. Huh?

Q. Where did he go to high school?

A. King High.

Q. And he graduated from there in 19, when was it 1968?

A. 1968, right.

The Court: Well, Mr. Pain, have you got extended further cross examination or are you going to be through pretty quick?

Mr. Pain: I think it might last another ten minutes, Your Honor.

The Court: Well, let's, let's take a short recess at this time. We will reconvene in fifteen minutes.

The Marshal: Everybody stand. We'll take a fifteen minute recess.

[304] (After a short recess, Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, to-wit:)

The Court: You may resume the stand, Mr. Logue. You may proceed, Mr. Pain.

By Mr. Pain:

Q. Now were you aware, Mr. Logue of an arrest in the spring of 1968, of Reagan, prior to the time that he was put in jail for the last time?

A. Let's see, aware of what date now, what date was it?

Q. Well, it was sometime before May the 22nd, 1968, two or three months prior to that time, I think, I don't know the exact date, but I think he was arrested then, are you aware of that?

A. (No answer)

Q. I believe he was picked up on a charge out of Austin.

A. Yes, sir.

Q. You were aware of that, do you know what the [305] charge was?

A. I don't recall what it was, what it was at that time. I believe it was, well, I don't know.

Q. Did it have something to do with drugs or narcotics?

A. Yes, sir.

Q. Do you know what type of drug or narcotic?

A. I don't know what, what type it was, marijuana, I believe it was.

Q. You believe it was marijuana?

A. Yeah.

Q. You could be mistaken, though?

A. Well, I could be.

Q. Now during 1966 and '67, were you claiming Reagan as a dependent on your tax returns?

A. Did I claim what?

Q. Did you claim Reagan as a dependent on your tax returns?

A. I don't, I don't recall whether I did or not. I am certain that I didn't, I mean I am not certain, but I don't recall.

Q. You just don't specifically recall?

A. I don't specifically recall.

Q. Do you know of any plans for college that Reagan had or that you had for him?

[306] A. He never did just specifically say what he had in mind, you know.

Q. So you just don't know whether or not he intended to go to college?

A. He intended to go, but he didn't, oh, he hadn't decided on what, what, you know, where he was again'.

Q. Did you know where he was going to college?

A. Well, he was, he was thinkin' about maybe goin' to Austin.

Q. To the University of Texas?

A. Yes, sir.

Q. Is that what he told you?

A. Yeah, that's what, that's what, that's what he told me.

Q. Do you know whether Reagan was ever expelled from school?

A. Yes, sir.

Q. More than once?

A. Well, I couldn't say whether it was more than once.

Q. You don't know?

A. No, I don't remember.

Q. Do you recall having to go down to school one time to get Reagan because you had received a [307] complaint that he was down there drunk?

A. That he was drunk?

Q. Yes, sir.

A. No, sir.

Q. You don't recall that?

A. I don't recall it.

Q. Were you aware of any prior suicide attempts by Reagan prior to the time that he cut himself in the jail?

A. I remember, I remember one—not that, I don't remember just the, just the date, but I remember him atakin some sleepin' pills that his mother had there at the house.

Q. What happend to him then, do you know?

A. Well, he was taken to the hospital and, and, and got aid there, you know.

Q. Do you know how long he stayed at the hospital?

A. Oh, I don't know just exactly.

Q. Well, approximately, to the best of your recollection.

A. Well, I'd say approximately not over two days, I think maybe a day or so.

Q. Were you aware of any other suicidal attempts by Reagan, other than the taking of the pills and the incident at the jail later?



[308] A. Well, I, I, I, I don't know whether it was a suicide attempt, but he, he and another boy were at 425 Longview, were at home, Reagan's home, and the gas jets were turned on some way or other and they were both taken to the hospital then.

Q. Uh-huh, do you know when that occurred?

A. That occurred in, not the date, no.

Q. Well, about when it occurred.

A. Well, let's see, that was in '67, I believe it was.

Q. All right, do you know when the incident of the pills occurred?

A. Well, that occurred right after he was arrested the first time, as best I remember it, for marijuana.

Q. Do you, can you recall the approximate date of that time?

A. No.

Q. Now after that, I think you mentioned that the gassing might have been a suicide attempt—

Mr. De Anda: —No, he didn't mention that at all; that was his question, Your Honor, and all he said was that Reagan and another child, a youngster, were in [309] the house and, and they were both taken to the hospital because of the gas jets being on.

Mr. Pain: Well, it was in response to a question concerning suicide and he did mention it.

Mr. De Anda: That was your, his answer to your question; he didn't say it was suicide.

The Court: Well, I don't believe he did either. You may rephrase your question.

By Mr. Pain:

Q. After this suicide attempt concerning the pills, did you seek to obtain any psychiatric help for Reagan?

A. It seems like, seems like we did send him to a psychiatrist.

Q. It seems like you did?

A. Yeah, uh-huh.

Q. Well, do you recall specifically whether you did or not?

A. Well, I'm almost certain that we did, yeah.

Q. Do you know the name of the psychiatrist?

A. I don't know.

Q. Did Reagan go to see this psychiatrist?

[310] A. Well, let's see, he did, yes, sir, yeah.

Q. How many times?

A. I don't, I don't, I don't recall how many.

Q. You just don't know?

A. Huh-uh.

Q. Now when he was put in the hospital as a result of taking the pills, did you go up there to see him?

A. Yeah.

Q. How many times?

A. Well, I don't recall that either, how many times.

Q. But you did go up and see him and talk to him?

A. I did, I did go up and see him.

Q. Do you know when it was in relation to when he was taken to the hospital?

A. No, sir.

Q. Now isn't it a fact that Reagan had not ever helped financially up to the time of his death?

A. Reagan, Reagan would give me money to keep,

we helped one another, I mean, I purchased a car for him and he—

Q. —But had he ever helped you financially?

A. Yes, sir.

Q. Well, I will, again, invite your attention to [311] the deposition that was taken last March, and I will ask you if you recall this particular question and this particular answer, I will ask you to read it—

A. —Okay.

Mr. De Anda: What page?

By Mr. Pain:

Q. Page 31, the deposition of Orval Logue, and starting at Line 10, would you read the question, please, sir?

A. Yes, sir, this? (Indicating)

Q. No, sir, at Line 10.

A. Line 10, "Had he, had he, had he helped you financially up to this time? He had not."

Q. Does that refresh your recollection a little bit, Mr. Logue?

A. Well, what, what I mean by that is, I mean, I mean his help, he helped me pay for the, for the car that I purchased for him and so on like that, and he, he, he from time to time bought his clothes, his school clothes and all, and—

Q. —Now you know Marvin Foster, do you not?

A. Yes, sir.

Q. Did you retain Marvin Foster to assist Logue in his, in the criminal charge that was against

[312] him, the criminal charges that were against him out of Austin?

A. Yes, sir.

Q. Do you recall how much Marvin's fee was going to be for that?

A. I don't recall.

Q. But you do recall that there was some talk about a fee?

A. Well, it, it would depend on what, how much it was, how much was involved.

Q. Let me rephrase the question—you didn't expect Marvin Foster to work for nothing?

A. No, sir.

Q. You did intend to pay him some fair legal fees, did you not?

A. Yes, sir.

Q. And you did pay him some on that?

A. Some.

Q. Do you recall about how much you paid him?

A. Well, I paid him around, about Two or Three Hundred Dollars retainer.

Q. Uh-huh, does the figure Thirty-five Hundred Dollars mean anything to you as far as what Marvin Foster's fee might have been, had there been a trial, does that seem about right?

[313] A. That sounds like maybe it's about right, it was about right there.

Q. Now did you also understand that Marvin was, Marvin Foster was going to represent Reagan on the indictment that came out of Laredo?

A. Did I understand that he was?

Q. Yes, sir.

A. Yes, sir.

Q. And did you discuss a fee with Marvin in connection with that particular charge?

A. No, no, no fee there that I recall.

Q. But here, again, you expected Marvin to represent you and you knew that Marvin Foster was not going to work for nothing?

A. Yes, sir.

Q. Did you put up any bonds for Reagan on either or any of his arrests?

A. I put up a bond, I, I, I didn't put the bond up myself, a friend of mine put the bond up.

Q. I see, was it with a surety?

A. What?

Q. Was it with a bondsman?

A. No.

Q. Was it a surety bond?

A. It was, it was just a friend of mine that went [314] his personal, personally went his bond.

Q. Did you have to pay a fee for that?

A. No, sir.

Q. That was just a favor?

A. Just a favor.

Q. Now I am sure that you have discussed this lawsuit with your lawyer, have you not?

A. This?

Q. This particular lawsuit here.

A. Yes, yes, sir.

Q. Okay, and you are reasonably familiar with the facts and what he has discussed with you, are you not?

A. Yes, sir.

Q. Did you make any objections to any one when you found out that Reagan was going to be trans-

ferred from the Memorial Hospital to the County Jail in May of 1968?

A. Did I make any objections?

Q. Yes, sir.

A. No, it, it happened so fast there that I don't, I don't, I don't believe I did, I don't remember, but I—

Q. —To the best of your recollection right now, you did not?

[315] A. Yeah. I got, I got, I tried to contact my attorney, you know.

Q. That was Mr. Foster?

A. Uh-huh.

Q. Now when you saw Reagan in the emergency room the evening of the 23rd, did you notice that he had a bandage around his arm?

A. Did I notice that he had a bandage around his arm?

Q. Yes, sir.

A. You mean when I first saw him?

Q. Yes, sir.

A. I don't recall whether he had it on his arm at that time or not.

Q. Did he subsequently have it on his arm as a result of the doctor treating him?

A. I'll tell you, I was much excited there, I don't know exactly just what—

Q. —Well, I can understand that, you just don't recall whether you saw it or not?

A. (Shaking head no)

Q. And I think you testified that you went up and saw Reagan through the window on the seventh floor one time after that, is that correct?

A. Well, I just don't remember. I wasn't, I, I [316] went and saw him after he was admitted to the seventh floor, I was up there quite some time, and Dr. Gwin came in and, and then, well, I never went back, I don't believe.

Q. And you did not talk with Reagan at that time, did you?

A. Not that I recall.

Q. Now you have smelled glue before, have you not?

A. Yeah.

Q. Airplane glue?

A. Yes, sir.

Q. And you know what it smells like?

A. Yes, sir, it's been a long time, but I know what it smells like.

Q. Have you ever heard of anyone sniffing glue for kicks, I suppose you have read about that in the newspapers, have you not?

A. Yes, sir, yes, sir.

Q. Have you ever been aware that Reagan sniffed glue?

A. I never was aware of it, no, sir.

Q. And I presume that, then, that you would not be aware that he may have sniffed glue in your house?

A. No, sir.

[317] Q. From 1966 on, do you know if Reagan ever did any work that you did not assist him in getting the jobs?

A. Let's see, from 1966 on—yeah, he worked for Hammons, I forget the initials, but his name is Hammons, he is a building contractor.

Q. I see, and you did not get that job?

A. I didn't have nothin' to do with that job.

Q. How long did he work for those people, do you know?

A. I don't recall how long he worked.

Q. Do you know about when—

A. —It wasn't long.

Q. A week or so?

A. Probably.

Q. Do you know about when this occurred?

A. Not specifically.

Q. Is that the only time that you can recall that he did some work that you didn't get the job for him?

A. Well, he, he got work, he worked as, in grocery stores.

Q. I mean after 1966.

A. After 1966?

Q. Yes, sir.

[318] A. That's the only one that I recall. He could have, but I don't remember.

Q. Did you ever visit the boy in jail?

A. Ever?

Q. Visit Reagan in jail?

A. Yes, sir.

Q. Do you remember when that was?

A. That was the day after he was arrested.

Q. Well, for which charge?

A. For the, for the Laredo charge, the last time that he was arrested.

Q. You had never visited him in jail prior to that time?

A. Let's see, I might have, I don't recall.

Q. Do you ever recall him, while visiting him in



jail, putting his head against the bars, making a, making a run at the bars and butting his head against the bars?

A. No, sir.

Q. You don't recall that?

A. (Shaking head no)

Mr. Pain: Your Honor, I have no further questions at this time.

The Court: All right, Mr. De Anda—

[319] REDIRECT EXAMINATION

By Mr. De Anda:

Q. Orval, did you love your boy?

A. Yeah, I did.

Q. To the best of your ability, did you try to do the best you could for him?

A. I did the best that I knew how.

Q. How far did you go in school, Orval?

A. What's that?

Q. How far did you get in school?

A. Myself?

Q. Yes, sir.

A. I went to the Fifth Grade.

Mr. De Anda: I have no further questions of this witness, Your Honor.

Mr. Pain: I have none.

The Court: All right, you may step down, Mr. Logue.

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WITNESS EXCUSED

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The Court: Call your next witness.

Mr. De Anda: Call Mr. Vaught, if you will, [320] please.

HOWARD VAUGHT,

was called as the next witness on behalf of the Plaintiffs, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION

Mr. De Anda: May we proceed, Your Honor?

The Court: Yes, sir, go ahead.

By Mr. De Anda:

Q. Please state your name, sir.

A. Howard Vaught.

Q. Mr. Vaught, where do you live?

A. At the present time?

Q. At the present time, where do you live?

A. I'm living in Winnemucca and Elko, Nevada.

Q. All right, sir, you are, I believe, you have had a heart condition?

A. Yes, sir.

Q. And you had a heart attack here when, about a year—

A. —April the 20th of 1970. I am still on sick [321] leave pay.

Q. All right, and how are you employed, sir?

A. I am not employed now. I am concerned with restoring myself to health.

Q. All right, prior to the time of your heart attack, how were you employed?

A. As U. S. Probation Officer at Corpus Christi.

Q. How long had you held that position?

A. About fifteen years.

Q. And what is your educational, your academic background, Mr. Vaught, where did you go to school and what sort of a degree did you receive, if any?

A. Columbia University, my degree is in psychology.

Q. You have a Bachelor's Degree?

A. Yes, sir.

Q. And you, during the entire time that you were Probation Officer in that fifteen year period, that was here in Corpus Christi?

A. Yes, sir.

Q. And for the record, what is your, what were your duties as Federal Probation Officer?

A. It was to make investigations for the Court as directed; to supervise the probationers of this and other Courts living in the Corpus Christi [322] and Victoria Divisions; also, Parole Officer, I represented

the Department of Justice, the Bureau of Prisons, and the Border Patrol, Border Patrol.

Q. And you were so employed in May of 1968?

A. Yes.

Q. Did you have the occasion in connection with your duties as Probation Officer to know during his lifetime Reagan Logue?

A. Yes.

Q. And when was the first time that you came in contact with Reagan, and why was it that you came in contact with him?

A. He was referred to me by the U. S. Probation Officer Griffin from Austin, where he had pleaded guilty to a misdemeanor, or in the United States Court in Austin, and he was to report to me for the purpose of helping me in a pre-sentencing investigation. He was brought to my office by his father, Mr. Orval Logue, or rather the two came together.

Q. All right, then when you first met him, Mr. Logue accompanied Reagan to your office?

A. Yes, sir.

Q. And following that meeting, did you have the [323] occasion to, to see Reagan Logue, visit with him, or talk to him?

A. Yes, numerous times.

Q. Over what period of time, Mr. Vaught?

A. There is quite a length of time between the request for a pre-sentence investigation and the date of sentencing, and as I recall, it must have been over a period of, of, of a month, I would think—

Q. —All right—

A. —three weeks or a month.

Q. Now this particular month, let's pin it down,

when was that, this month period when you were seeing him pretty—

A. —Largely in the month of May, 1968.

Q. May of 1968?

A. Yes, uh-huh.

Q. That would have been the month that he died?

A. Yes, sir.

Q. All right, was the first time that you came in contact with him in May of 1968?

A. It could have been April.

Q. All right.

A. The last part of April, as I recall.

Q. In other words, you had contact with him for one [324] or two months—

A. —Yes, uh-huh—

Q. —prior to his death?

A. Uh-huh, yes.

Q. How frequently would you see Reagan Logue?

A. Oh, the first week or so, I saw him on two occasions that I recall.

Q. All right.

A. And as this was a misdemeanor, and as the scope of the pre-sentence investigation was limited, I sent the report in and told Reagan this—that it was gone and with the recommendation—I did not tell him the recommendation, but it was after the pre-sentence was submitted, the pre-sentence report was submitted that Reagan called, would call me on the phone and talk to me for some length of time, and then come into my office.

Q. Was this because you asked him to come in, or would he come in because he wanted to come in?

A. It was entirely of his own volition. Under these

circumstances, I didn't feel that it was proper to even encourage him, but he came entirely of his own volition.

Q. In other words, you had already concluded your [325] pre-sentence—

A. —Yes, sir—

Q. —investigation, and had filed your report?

A. Yes, sir.

Q. Would that have terminated your official duties and responsibilities insofar as Reagan Logue was concerned at that point?

A. At that point, yes, sir.

Q. So that any visits that you had with him thereafter were not anything required by the Court, or by the pre-sentencing investigation?

A. No, sir.

Q. Because that was already done?

A. That's right.

Q. What did you recommend with reference to your pre-sentence investigation, what did you recommend to, as far as Reagan Logue was concerned?

A. Well, it was a bit of an unusual recommendation for a misdemeanor, but I had, I had concluded that there was, that he was self-destructive, that he had some destructive tendencies and I recommended that he be committed to a hospital because of this.

Q. All right, and then following—strike that. [326] So then, actually in your pre-sentence investigation which was filed, you recommended even at that time hospitalization and treatment for Reagan Logue?

A. Yes, uh-huh.

Q. Was that for any physical ailment or was it confined strictly to what we would call mental or a psychiatric condition?

A. I saw him as a disturbed, very, rather severely disturbed, severely disturbed emotionally, and immature, and I had a very strong feeling that there was a possibility that he could or could tend to hurt himself.

Q. All right, now following this report that you sent in, and having formed this conclusion, I believe you said that you continued to see Reagan Logue?

A. Yes, I did.

Q. I believe you mentioned that you did not disclose to Logue what you had recommended?

A. No, I, I, I was a bit, I might have been a bit devious, I did tell him that I did not recommend prison, but I did not tell him what I recommended.

Q. All right, following, and following this report, [327] about how many times did you see Reagan Logue when really it was not necessary to see him, but because he asked—

A. —Well, Reagan—

Q. —you to see him?

A. Reagan would come in, sometimes call, ask to come in, and at other times just come in, usually after work, and with increasing frequency. And a couple of times, oh, every three or four days, and then every two or three days, it got to where he would be in about three times a week, and he would stay for, usually about quitting time, if a Probation Officer had a quitting time, and we would often just sit there for, 'til 6:00 or 7:30 at night and talk.

Q. Would you be talking to him during this time?

A. Yes, uh-huh.

Q. In other words, your talk sessions lasted anywhere from, well, more than an hour?

A. Oh, yes, yes, we had very, very extended talks.

Q. What sort of a person was Reagan, and I'm getting at what qualities, from your observations of him and talking to him, what qualities did he have that you would consider, attribute, what problems did he have that you would consider [328] liabilities.

A. Well—

Q. —Just as an individual, I want you to tell the Judge, the best you can, what kind of a person he was.

A. Reagan was a severely disturbed, reflecting what I thought was an unstable, almost traumatic environmental background; he was immature, I'd say at best mid-adolescent.

The Court: I have heard the word adolescent used, what is meant by adolescent, or mid-adolescent as you used that word?

The Witness: Oh, that's a very difficult period of time, between the narcissus and an adult, or the, it varies with people, it doesn't, with different people it is not, well, it is difficult to say what ages, but usually from puberty to, to the time when they assume some of the manners of adulthood.

By Mr. De Anda:

Q. And he was going through this period of adjustment, then?

A. Yes.

Q. What we might call the—



[329] A. —Yes, a very, a very difficult time, he was having a difficult time of it.

Q. All right, so you have described him as a disturbed person, and what about his qualities as, if he had any, what did you find in him?

A. Well—

Q. —What did you see in him?

A. Well, at the time that I had last seen, last seen Reagan, after these long series of talks, I had noticed in him certain redeeming traits; he was not a vicious person, and, and quite, in fact, he was opposed to violence—

Q. —I'm sorry—

A. —I felt that he was opposed to violence of any kind. He didn't, he never did, I never did hear anything that would indicate this sort of thing. He was a generous person, he was, I would think at this time he was grasping, trying to understand, to get direction, or to find some direction in his life. I think, too, he was what has been described as a social drop-out at that time, but he was wanting to establish and foster and adopt a set of values and attitudes of his own. He discussed matters along this line that I thought was much too [330] deep and too advanced for his abilities. It was, in my opinion, anyway, it was beyond, some of his discussions, philosophical discussions were what, well, they were beyond my knowledge and scope.

Q. I believe you used the word, social drop-out, was he rebellious or was he resentful of anything?

A. No, he was not rebellious or hostile; that was another quality that I should have mentioned. Perhaps he, he rejected what he called the hypercritical

values of the older generation, or most of them, anyway.

Q. All right, now why did you, did you form any opinion or conclusion as to why he was coming to you and having these talks?

A. Well--

Q. —What motivated him, is what I am trying to find out?

A. Well, I thought that he was searching for some sort of direction, something that he could grasp, something he could believe in and apply himself to. I thought he had quite a long ways to go, but he was going in the right direction at that time.

Q. Would it be fair to say he was seeking help—  
[331] A. —Oh—

Q. —or that sort of thing?

A. That was very apparent, I think, too, that there was a lack of adequate, close, meaningful interpersonal relationship in his background; that that was, had been lacking, and I think that, that, first, he was first polite and cooperative, and then when he learned that I would listen, I think he was trying to identify with me.

Q. All right, now following these conferences and so forth—by the way, during this time, did you get any indication of any kind observing the boy or from talking to him, that he was still using any sort of drugs or narcotics?

A. Well, he, he, of course, was never, never would come to my office under the influence of drugs. I have never seen him under the influence of drugs, but it was my opinion that he did, did continue to use them. How often, I don't know.

Q. All right, now, Mr. Vaught, I believe you recommended hospitalization for him, you said?

A. Yes, sir.

Q. Is there, in youngsters of, of Reagan Logue's age, is there an extensive use of marijuana [332] and these other narcotics that we've been talking about?

A. At his age, yes, it is very extensive, it is tragically extensive.

Q. And can you give me some, do you have available to you some percentages as to how many youngsters, perhaps, say, in the college age and of high school age, that are involved in the use of marijuana, for example, or other, some of these other drugs, such as LSD? I am not talking about heroin, but I am confining myself to marijuana and drugs such as LSD or these other milder forms of drugs, if I can use the word.

A. Are you speaking of, may I ask, are you speaking of secondary schools or kindergarten, or—

Q. —I was talking about high school.

A. High school?

Q. I believe I mentioned high school and college.

A. I think there is a wide range of estimates that have been made by many so-called self-assumed experts in the field, but I think the consensus, and I think it is most accurate, in my opinion, it is about twenty percent of the high school age.

Q. Does that percentage increase as they get into [333] the college years, or does it decrease, in your opinion?

A. It increases dramatically in the freshman and sophomore years, and then it drops off in the junior and senior years of college, and then dramatically

drops again as they leave and enter the first competition with preoccupations, and then it, well, it's almost like a bell curve.

Q. I'm sorry, I didn't get the last—

A. —It is almost on a bell curve, starting from kindergarten back into adulthood.

Q. All right, the fact that a person, a youngster is involved in, in this sort of thing, these percentages that we have been talking about of young people that do use these drugs, does that mean that we can write that child or that youngster off, does he have any hope of rehabilitation, or what is your opinion in that regard?

A. Oh, this twenty percent of high school kids that use it, as they grow older, unless they are, they get hooked on stronger drugs, and as they continue maturing into adulthood, they, the percentages drop off again. It would have to be, or the older generation better never die, you know. The, the twenty percent, of course, [334] can not be written off at all.

Q. All right, have you had experience in the fifteen years that you were here in dealing with youngsters that got involved in problems such as Reagan Logue was involved in, with narcotics, who subsequently grew into manhood, into adulthood?

A. Very many of them, some of whom became attorneys, physicians.

Q. All right, what percentage, if you can give me a percentage, of youngsters that were involved in this sort of activity that you had dealings with and had dealings with and worked with, rehabilitated themselves, so to speak, or be, became useful citizens?

Mr. Pain: Now, Your Honor, I would object to that; what percentage of, of the ones that have used drugs, that he knows about, that would become useful citizens, I think that is purely speculative on his part. I don't think he would even know; he might be an expert, but I just don't think that there is any basis for whatever opinion he might give for that percent of the people who used it and later became [335] useful citizens, except—would you read the question back?

The Court: That's not speculative.

By the Witness:

A. I would answer it like this—my official connections with them can last no more than five years usually of all classes of offenders, probationers. The number that would get through the five-year period would approach ninety percent. This includes all offenders, but those who were convicted, or those who used marijuana among those offenders, who, who completed probation, I, I, I don't believe I could give a percentage, neither could I tell you that of these, that percentage that got through, how many had quit or continued to use marijuana, but I can recall of many who have gone on to become good, useful citizens that I am sure do not use it now in their jobs and capacities. Is that responsive? I'm sorry—

The Court: —Mr. Vaught, let me ask a question so that I will be sure I understand what is going on in this thing. When you are talking about twenty

percent, you are not saying that twenty percent of [336] that age group has been before you as a Probation Officer, or you have had dealings with them in pre-sentencing reports, or anything like that?

The Witness: Oh, no, sir, I think, I understood the question to be what percentage of boys that age in a secondary, in the secondary schools, this is high school—

The Court: —I understood the question to be directed to the people that you have had actually, who you have come in contact with in your work as a Probation Officer.

The Witness: Oh, no, sir.

The Court: That's why I said it was not speculative. Now if you are just asking about the twenty percent in Nueces County, or some place, then that is speculative.

Mr. De Anda: Judge, we're talking about the twenty percent, the twenty percent question that we talked about earlier was a general question, as to the quantity of, to the degree of use prevalent in this age at school.

The Court: That is what I understood—

[337] Mr. De Anda: —And then the last question I asked him, which Counsel objected to, I was limiting my question to, to the people that he had dealt with.

The Court: That's what I was trying to get at, so that your last question is related solely to the people that you have dealt with yourself?

The Witness: Yes, sir.

The Court: All right.

By Mr. De Anda:

Q. Now, Mr. Vaught, in your response to the question let me be sure that I understand it, you used the figure of ninety percent, but that was, that included all the people that you dealt with—

A. —On probation.

Q. —on probation, and then you said you couldn't give me a percentage specifically limited to people involved with narcotic problems, marijuana—

A. —Marijuana—

Q. —but that you know of many, many cases where you have dealt with these people, and of your own knowledge, that they have gone on to become an asset to their community and have rehabilitated themselves.

[338] A. Yes, that's right.

Q. All right, let me ask you something specifically about Reagan Logue, if you can give me an opinion, you, first of all, let me ask you this—the amount of time that you spent with Reagan in this period that we are talking about, would that exceed the amount of time that you normally would spend with probationers or people that you were dealing with on pre-investigation, pre-sentencing investigations?

A. Oh, yes, a great deal more because of the frequent visits.

Q. All right.

A. Most of them are content to sit and wait; they don't want to see me as, well, they want to see me as little as possible.

Q. Okay, based on your knowledge of Reagan Logue, and I'm talking now only about Reagan Logue and not statistics—

A. —Uh-huh—

Q. —based on your knowledge of Reagan and his attitude, and the nature of the problem as you understood it to be, and from what you have, from what you had found out from your investigation, is there any reason that you know of why [339] you feel that Reagan could not have, with proper medical attention and psychiatric therapy, rehabilitated himself and joined this vast group of rehabilitated people?

A. No, no, I know of no reason to see, I know of no reason that Reagan Logue could not have overcome these problems. I have seen many with much worse problems that overcame it without many of his good qualities, and who did become good citizens.

Q. Now with reference to Reagan Logue again, did you have an occasion to find out, or get in any way involved with his incarceration on May the 22nd, 1968?

A. Yes, I probably injected myself into this. After a series, during the course of these talks, or it might have been before, when he discovered that he was being investigated for a felony charge, I became even more concerned that he was suicidal, more convinced that he was suicidal, and so much so that I went to his attorney over here in the witness room, the



attorney, Marvin Foster, was here on another case, and I asked Marvin that if he should be indicted, that his parents and everyone else [340] that could have any influence, should watch him very carefully because I felt that it was a real danger that he would try to hurt himself, in fact, kill himself.

Q. All right.

A. Then I was returning from a trip out of town and I learned of his arrest. But it was an official trip out of town, and I came by the County Jail late one evening, it must have been 6:00 or 7:00 o'clock, and I was told that Reagan was, had been put in jail, and had cut his wrist and had been taken to the hospital. And they asked me to help them find a U. S. Marshal, there was not one available in this part of the country, or the south, and I finally got in touch with Chief Deputy Casey Slocomb, who did, then, authorize Reagan's removal to the, from the County Jail to the hospital for treatment of the arm.

Q. Well, you say they, they asked you to help them, who is they?

A. They, the jailers, the ones that—

Q. —At the Nueces County Jail?

A. At the Nueces County Jail.

Q. And so at their request, then, you contacted [341] Mr. Slocomb, Casey Slocomb?

A. Yes, that's right.

Q. And thereafter he authorized the admission of Reagan to the hospital?

A. Yes, sir.

Q. At that time was Reagan already in the hospital?

A. I believe he was not in the hospital, but they were seeking authority to do it, someone to, who would pay for it.

Q. All right.

A. The right to do it. They are very concerned about moving Federal prisoners and they wanted to be sure that they had the right to do it.

Q. All right, so this was your first contact with his incarceration, which was this request by the Sheriff—

A. —Yes—

Q. —or someone there at the jail, that the U. S. Marshal's office be contacted?

A. Yes, that's right.

Q. And that was because there was no one here locally at that time?

A. There was no one here, nor in Edinburg, or Brownsville, that I could contact. I couldn't get any of them.

[342] Q. All right, thereafter, after you, this was done, Mr. Vaught, did you have any occasion to contact the Marshal's office, or was there any conversations between you and any members of the Marshal's office?

A. Yes, the next day, the next morning, rather early, Deputy Marshal Bowers came up from Edinburg to Corpus Christi. And I am sure for this reason, for this purpose, and we discussed the situation. He had already been informed of the circumstances of what had happened, but we discussed it and I had given Mr. Bowers my opinion of Reagan.

Q. All right, can you tell me specifically what your conversations were, as best you can recall?

A. Well—

Q. —With Mr. Bowers.

A. That was—

Q. —Let's take them one at a time; you say this happened on the morning of May the 23rd, it would have been—no, would it have been the morning of the 23rd or the 24th, I'm sorry—

A. —I can't recall.

Q. All right, for the record, I think it would have been the 24th, Reagan was taken to the [343] hospital on the 23rd of May.

A. This would then have been the 24th, I'm sure.

Q. The following morning would have been the 24th. All right, now when was your, what time was your first conversation with Mr. Bowers?

A. It was about 8:45, 9:00, perhaps 9:00 o'clock in the morning.

Q. All right, and what was the conversation that you had with him?

A. It pertained entirely to Reagan Logue.

Q. All right.

A. And the conversation, as I recall—I recounted to him what I knew of it, and also told him what I thought of Reagan's propensity to self-destructiveness. I suggested to him that if it were possible for him to do so, to get permission to keep him in the hospital, that I thought he needed hospital, hospitalization at the time.

Q. All right, and was Mr. Bowers aware of the, of course, he was aware that Reagan had tried to kill himself in the pail—

A. —Oh, yes.

Q. Now did he give you any indication that he

understood the problem as far as Reagan's suicidal tendencies?

[344] A. Mr. Bowers said that he would see what he could do about leaving him in the hospital. He went out to the hospital and came back, as I recall, I don't, I don't, this is not, this is all by memory, I made no notes, and it's been what, it seems to me it's been a hundred years ago, but I saw him before, I think, and after he had made the trip to the hospital. He told me that he would try to do what he could do to see if he could get permission to leave him in the hospital.

Q. All right, and did you have any, any subsequent conversations with Blackie, Blackie Bowers about this?

A. Very briefly. He would report to me the developments of who he had called and his efforts to, to keep him there.

Q. Why would he do this, did you have any official connection with the incarceration or the decision, any voice in the decision at all?

A. No, I didn't. Blackie knew that I was concerned and Blackie was also a very kind person and was concerned himself.

Q. All right, so he knew you were worrying, he knew you were worrying about Reagan and Reagan's [345] going to jail, and he was more or less keeping you posted on the developments?

A. Yes, sir, that's right.

Q. Did you talk to, to anyone else, Mr. Vaught, with the Marshal's office concerning this, this problem of keeping the decision, of keeping Reagan Logue in jail?

A. No, I did not.

Q. Insofar as you were able to, did you convey to Mr. Bowers everything you knew about Reagan's mental condition and his suicidal tendency?

A. I told Mr. Bowers that I felt that if Reagan was given an opportunity, he would try it again.

Q. All right.

A. That he was—

Q. —And this occurred on the morning of May the 24th when Reagan was still in the hospital?

A. Yes, in fact, throughout the day. He, I, our meeting, I think the last conversation that I had with Mr. Bowers was somewhere about 2:30 or 3:00 in the afternoon right out here in the hall; I happened to be on the second floor and he told me, I thought it was apologetically, but he announced that he had nothing, nothing, that he had to take him back, he had no choice, [346] that he was ordered to take him back to jail.

Q. All right, now from that point on, did you have anything further to do, or talk to anyone further about Reagan Logue before his death?

A. No, I felt—I had been informed that Judge Connally had signed an Order committing him to, I believe, a hospital or medical center for Federal prisoners at Springfield for observation, this was my information, and I had never seen the Order, I don't know, and I understood, also, that he was to be taken very shortly to the, to this hospital. I thought at that point that I had done what was within the purview of my job, and as far as I could, as far as I could butt into the Marshal's territory.

Q. All right, so you had no further conversations

with anyone pertaining to Reagan, then, as far as you can recall, before his death on the following day?

A. There was one other, one other thing—when I learned of the indictment, and, and I was going out of town on an official trip, and I called Marvin Foster and told him that, I asked him to inform the jailers down there and make them aware of the situation at the jail, or at the [347] Nueces County Jail, you know, Marvin Foster knows them all, and I think had some influence on the thing.

Mr. De Anda: We will pass the witness, Your Honor.

The Court: We will recess for noon, and we will reconvene at 2:00 o'clock.

(And thereafter at 2:00 o'clock P.M., Court reconvened in the above entitled and numbered cause, all parties being present and presiding as before, the following proceedings were had, to-wit:)

The Court: Please be seated. You may resume the chair, Mr. Vaught, you may proceed.

Mr. De Anda: As I recall, I had—

The Court: —You had rested?

Mr. De Anda: I had concluded my [348] examination of Mr. Vaught as a witness.

The Court: Oh, yes.

## HOWARD VAUGHT,

was recalled to the witness stand, having previously been duly sworn, testified as follows, to-wit:

## CROSS EXAMINATION

By Mr. Pain:

Q. I think, Mr. Vaught, that you testified that twenty percent of the high school students are users of drugs, was it drugs, or was it marijuana that you were referring to?

A. Drugs.

Q. Drugs?

A. Yes, sir.

Q. What would that include?

A. That would include marijuana, hallucinagens, amphetamines, barbituates, that group.

Q. Would heroin come in that classification that you named?

A. No, there is still another estimate of around five percent which are users or pops heroin.

Q. Well, then this twenty percent does not include [349] heroin users?

A. No, sir.

Q. So if you included heroin users, it would be higher?

A. Yes, sir.

Q. Would it be a figure of twenty-five percent, is that correct?

A. Yes, this is a consensus of estimates and surveys.

Q. Now this twenty-five percent is confined to the Corpus Christi area?

A. No, it is not confined to—

Q. —Is it the Texas area?

A. Yes, the Texas area, certainly the Houston area.

Q. Or is it a more expanded geographical area, such as the southwestern areas, or what does this twenty percent include?

A. I'd say nationally.

Q. You would say nationally?

A. Yes.

Q. I see.

A. There has been surveys.

Q. Would this statistic include from New York City, as well as perhaps Midlothian, Texas, is that [350] correct?

A. Yes, and the average would, would be maybe much higher in New York and not as high in Midlothian, but the average is, as I repeat, the consensus of many, many, a number of surveys.

Q. So this twenty percent is a nation-wide figure?

A. Yes, sir.

Q. Then the twenty-five percent, if you include heroin users, is also a nation-wide figure?

A. Yes, sir, this is for the secondary schools only; it's much higher in college.

Q. Would you consider that this twenty-five percent figure would apply to the secondary schools in Corpus Christi?

A. On an average, yes, the schools will vary here. I happen to have a little better knowledge of the Corpus Christi Schools and some schools are worse than others, but I think that twenty percent would be a rather accurate figure.

Q. Would you consider this percentage of drug



users higher or lower in Corpus Christi than in New York City?

A. I think it would be lower here.

Q. Do you think that, how would you compare the percentage of high school drug users in Corpus [351] Christi with the percentage of high school drug users in Houston?

A. A little bit lower.

Q. Lower for which?

A. Corpus Christi—

Q. —How would you compare—

Mr. De Anda: —Would you please complete your answer.

The Witness: There has been a big increase in Corpus Christi in the past, since the early, early summer of 1969, in the use of all drugs, but especially heroin. This twenty-five percent, then, would, would include heroin, which is out of proportion to marijuana, marijuana users.

By Mr. Pain:

Q. The twenty-five percent figure, you say—I will rephrase the question—you say the percentage has increased since sometime in 1969?

A. In this city.

Q. In this city?

A. Yes, sir.

Q. Has it increased to the twenty-five percent figure that you mentioned or from the twenty-five [352] percent figure that you mentioned?

A. It has increased to the twenty-five percent. This is all relative.

Q. Prior to 1969, it was below twenty-five percent?

Mr. De Anda: I don't believe that the witness has completed his answer.

Mr. Pain: Your Honor, I believe he did complete that answer.

The Court: I thought he did.

Mr. De Anda: Well, I thought he said something else.

Mr. Pain: If he said something else, it wasn't being responsive to the question.

The Court: Go ahead and ask another question.

Mr. Pain: Would you state the question again, please?

(The following question was read back by the Reporter and was as follows: "Prior to 1969, it was below twenty-five percent?")

By Mr. Pain:

[353] Q. Prior to 1969 would you estimate that this level of drug use in the secondary schools in Corpus Christi was below, or above twenty-five percent?

A. It was below twenty-five percent, quite a lot below the twenty-five percent because of the, of the very small use of heroin among the high school students. This is what raised the Corpus Christi percentage to—

Q. —What was the percentage prior to 1969?

A. I would say the habitual users.

Q. Well, now are you referring to habitual users or just users?

A. I will say those that smoke it when they can get it, or use it when they can get it.

Q. Was that included in your classification of the twenty percent of high school users that you mentioned on direct examination, the habitual users, or the ones that can get it, or is there a difference?

A. Well, when they can't get it, they don't use it. They only can smoke it when they have it. There are times that, that it is not available, marijuana is not available to them, but whenever they can get it, they smoke it. I would say [354] this is the ones that, this, these are the ones that I am including in the twenty percent.

Q. And state again the percentage of drug users from Corpus Christi in the secondary schools prior to 1969?

A. My guess would have been about fifteen, eighteen percent here.

Q. Is this a guess?

A. Of course this is a guess.

Q. Are all of these guesses?

A. Yes, they are guesses, but based on close association with many of these high school students who later become heroin addicts.

Q. How many high school students are there in the Corpus Christi Independent School District?

A. I don't know, it must be forty thousand.

Q. Is that also a guess?

A. That's purely a guess, I just—

Q. —Along with your twenty percent?

A. Yes, my estimate, and understand this, when I say a guess—

Mr. Pain: —Your Honor, would you instruct the witness to be responsive to the questions. If he wants to volunteer information, I would suggest that he do [355] so through his attorney.

Mr. De Anda: Just a moment, Judge, I believe the witness has the right to fully answer the questions, and he is using the word guess, and obviously the witness has given perhaps a different meaning to the word, guess, than Counsel gives it. I can appreciate what Counsel is trying to do, that it is something wholly conjectural and speculative, and I think the witness is trying to explain that by the use of the word, guess, as I gathered, that these are estimates that he makes based on the information that he has had made available to him through the years, and he has stated that, in effect, and I don't believe his answer would be unresponsive at all.

The Court: Well, I'm going to let him explain his answers on this kind of a question, because it is bound to have a certain amount of speculative aspects to it, and I think he, not being a user himself, or anything like that, why I am assuming he has had to make a judgment [356] based on information that he has gathered, or people he has talked to, and I am going to let him explain his answers.

By Mr. Pain:

Q. So you guess that there are about forty thou-

sand students in the secondary, secondaries, themselves, in the Corpus Christi Independent School District, is that correct?

A. This ~~is~~ just a guess, yes.

Q. What caused this increase starting in 1969, the increase in drug usage in the secondary school students in Corpus Christi?

A. My young friends who leveled with me, and I got quite close to a lot of these young addicts, and when they were convinced that I was the one who could help them get in the hospital, or would help them with the methadone program, which I had gotten started here, and who was concerned with them as a medical problem, and since I wasn't in the investigation or prosecution and so forth, they, many of them did level with me. And they told me that in the spring, the late spring of 1969, that there was a severe marijuana shortage here which had nothing to do with the operation on the border, that [357] this was not related, and that they, the customs and narcotics officers had knocked off some of the big suppliers in this area, and that they much preferred to use marijuana, but in the absence of marijuana, the heroin pushers came into the south side where the money was available, where they could afford to buy a daily supply of heroin. That they would use it instead of marijuana, that they did not intend to be hooked, in fact, would quit periodically to assure themselves that they could quit. And having done it a few times and convinced themselves that they could take it or leave it, until it was then too late, they would wake up one day to find they could not leave it alone any more.

Q. So the answer to the question would be—there was a marijuana shortage, and as a result of the void created by the shortage, the heroin pushers moved in, would that be accurate, an accurate rephrasing of the answer?

A. Yes, this is what a number of them told me.

Q. Now out of these forty thousand students in the Corpus Christi School System, how many did you interview?

A. About the prevalence of drugs in the high school, [358] I must have talked to a number of dozens.

Q. Four or five dozen?

A. I think so, yes.

Q. About sixty?

A. I don't think it would be too much of an exaggeration.

Q. Now if you, if we use your figure of twenty percent, and your figure of forty thousand, that would be about eight thousand users of drugs in the Corpus Christi School System?

Mr. De Anda: Now just a moment, Your Honor, I believe Counsel is, we are getting lost here. There are approximately forty thousand, I think forty-four thousand children in the school system of Corpus Christi, but that includes all grades, and I believe that when, when Mr. Vaught was testifying, that he was talking about the secondary schools.

The Court: That's right.

Mr. De Anda: And so I don't, I don't really see too much relevancy in all of this. It is interesting and I,

I, I think that the high school population, of course, is substantially less than the overall [359] population, so for whatever it is worth, if we are going to go into this, I think we ought to try to make it as accurate as possible.

Mr. Pain: That was what I was attempting to do with Mr. Vaught.

The Court: You asked him a general question about the whole school population and you—

Mr. Pain: —No, sir—

The Court: —when you got the forty thousand figure, your question was with regard to the school population, not just the high school population.

Mr. Pain: I did not intend that the question be that way.

The Court: Well, that was the impression that I got from it.

Mr. Pain: I don't know how it was taken, but my intention was to ask him the population of the secondary, the population of the secondary schools of the Corpus Christi Independent School District.

The Court: Well, clear it up, then, because that is the impression that I had.

[360] Mr. De Anda: That's the way I recall the question, Judge.

The Witness: And that is the answer I intended to give to that. What I mean, the whole school system, it was a guess at the entire population.

By Mr. Pain:

Q. What is the population of the secondary school system, studentwise, of the Corpus Christi Independent School District?

A. I really don't know.

Q. Could you estimate it?

A. I would think, I would guess ten thousand, nine thousand, perhaps.

Q. Okay, so if your figure of ten thousand, taking your figure of ten thousand in the Corpus Christi secondary school system, and your figure of twenty percent drug users, that would be about two thousand drug users or two thousand, five hundred drug users, if you included the heroin users, would that be an accurate rephrasement of your testimony?

A. I think that, that wouldn't be an exaggeration.

Q. Then you say interviewed about sixty of these students in the secondary high school [361] system?

A. Sixty heroin users.

Q. Oh, sixty heroin users?

A. Yes, these are the ones that come to me with their problems. Not the marijuana smokers.

Q. I think my question was, how many students did you interview during this period, how many secondary students did you interview during this period?

A. Oh, this period, in '69—

Q. —In arriving at your twenty percent.

A. Over the years—



Q. —In arriving at your twenty percent drug usage figure.

A. Here is another guess, I'd say a hundred, a hundred and fifty that I have talked to, students that I have talked to.

Q. During what period of time?

A. Oh, in the five years preceding last year.

Q. Well—

A. —I have made talks to classes, was asked to make talks to classrooms.

Q. So about a hundred and fifty, of the hundred and fifty that you have interviewed in the past five years, that would be about, roughly, [362] twenty-five a year, would that be correct?

A. Well, at least that many.

Q. And on the basis of interviewing twenty-five high school students, or secondary students per year, you arrived at the figure that twenty percent of the total sescondary population of Corpus Christi were drug users, is that correct?

A. Yes, uh-huh.

Q. Obviously some of your evidence had to come from hearsay from those students, is that correct?

A. Of course, in fact, that's where I got the information, from the students, and it made a difference which student I asked. I made allowances for that; the drug users' estimates, they were very high since their friends, their associates were, most of them would be users, and they had, would have the impression that not everyone, everyone in school was using it. When I talked to them, among that other group, then, this was very low, their estimates were very, very low, they knew of not too many that used

it. This would be an average, and a guess at an average.

Q. But from those that you talked to, you knew just [363] how many and which ones to rely upon to, in order to come up with a reasonably accurate figure, then, is that correct?

A. I had some very, very reliable information as to the users, and particularly if they admitted it to me.

Q. Now I think that on direct examination you testified that a certain percentage of the ones that dealt with you in your capacity as Probation Officer, turned out to be, turned out later to be good up-standing citizens, is that correct?

A. A majority.

Q. No, I said a certain percent, was that your testimony?

A. Yes, sir.

Q. What was that percent, I've forgotten, or did you—

A. —No, I didn't give a percent on that. I don't know, I couldn't give a percentage.

Q. Did you give a percentage as to the young people that you worked with in your capacity as a Probation Officer, whether or not they were drug users, who later turned out to be good, upstanding citizens of the community?

A. I gave a percentage of those that would complete [364] their, their probation subsequently, and many of whom I knew to go ahead and become useful citizens.

Q. I think your testimony was also to the effect that you see many situations concerning young drug users?

A. Uh-huh.

Q. And than had a worse problem that Reagan Logue did, is that correct?

A. I thought they were worse, yes.

Q. You had seen quite a few that had a worse problem than he had?

A. I think many of them were much more hostile, much more rebellious, that they were lacking in many of Reagan Logue's qualities, that did grow up and become useful citizens.

Q. Well, did you have many of them that you came into contact with in your capacity as a Probation Officer, that would be as involved with drugs as Reagan Logue was and still grew up to be good, substantial citizens?

A. I didn't handle very many that were involved at that age, at Reagan's age, that were involved as much as he was on the drugs.

Q. Compared to others, was Reagan involved more [365] heavily, or less heavily in drugs than most of your other people that you came into contact with as Probation Officer?

A. I'd say he was more involved, and particularly for his age. He was, for his age, quite heavily involved.

Q. Uh-huh.

A. In drugs.

Q. When did you become convinced that Reagan Logue was suicidal and was a danger to himself?

A. This was after a couple of interviews with him. The second one was quite long, we were together a couple of hours. And this was more of a strong feeling, and I had learned that there was some attempt

to, a previous attempt at suicide, they weren't sure, I mean fairly sure that it was an attempt at suicide, but I believe it was an overdose of sleeping pills, as I recall. But they thought very strongly that there was a possibility that this was an attempted suicide. And with the, with the feeling that I had gotten from the hours of talking to him, I thought that, and also the fact that he was very much disturbed, I thought that the boy should be in a hospital at least [366] for awhile.

Q. Mr. Vaught, the question was—when did you become convinced that he was suicidal?

A. Oh, when—oh, well, I don't remember the date at all, Mr. Pain. I think it was, it, it, it was before I had completed my pre-sentence investigation that I, that I had done—you have the pre-sentence date, the date of the pre-sentence investigation there, it would be in, within a few days prior to that, the date that that was written.

Q. And you told Blackie Bowers that Reagan Logue had a, quote, "Propensity to self-destruction," unquote, as I recall from your direct examination, is that correct?

A. Words to that effect, but that was obvious. I mean, he was in the hospital for that, but I told him anyway.

Q. Were you satisfied with the efforts of Marvin Foster and the Marshals, and perhaps the United States Attorneys in attempting to, and ultimately getting the Order of Commitment?

A. Yes, I was very satisfied with Blackie's efforts and his attitude; they were very gratifying.

Q. That was what you were after, an Order of [367]

Commitment, for Reagan Logue to be committed to a mental institution for studies?

A. Yes, I recommended that.

Q. That's what Judge Connally gave, wasn't it?

A. Yes, sir.

Q. Now you had a real fear that Reagan Logue was going to hurt himself if he were taken back to the jail, though, is that correct?

A. Yes. You see, this, this grew, this fear grew with the relations during these talks; that he, among other things, that he had a horror of imprisonment, and in subsequent talks, following my submission of the pre-sentence report, in the subsequent talks that caused me to be even more convinced that he was definitely suicidal.

Q. What is the role of a Probation Officer to a Federal Judge, would you explain the relationship?

A. The role in relationship to the Federal Judge?

Q. Yes, sir.

A. It is to provide and follow his orders and carry them out, and to provide him with the best possible information to make decisions on, and to, to see that his orders pertaining to probation is carried out, and to—

[368] Q. —Would it be inaccurate to say that you had a direct pipeline to a Federal Judge concerning possible, or people charged with crimes?

A. Always have complete access, yes.

Q. You felt like you could call a Judge at any time?

A. Any time, yes, sir.

Q. But yet, you didn't call Judge Connally in connection with this fear that Reagan Logue might have hurt himself if he were transferred from the hospital to the jail?

Mr. De Anda: Your Honor, just a moment, I want to object to that question; first of all, because there is no pleading here of any kind that Mr. Vaught, they blamed everybody but Mr. Vaught up to now for this, either in the pleadings or in their interrogation, they have no pleading, and they have made no assertions that Mr. Vaught was negligent in any way. And I don't see the relevancy of this line of inquiry. Mr. Vaught has testified as to what he actually did, and as to the information he conveyed. I don't see the relevancy of what he did not do, that would [369] concern anyone other than the Marshals, putting the Marshals on notice. So I don't see the relevancy of this, this line of questions to Mr. Vaught at all, as to why he didn't call the Judge, or why he didn't do something else.

Mr. Pain: The Marshals and others have been charged with negligence; this negligence, in their complaint, is imputed to the government. What we are attempting to show is that they were not negligent, and by definition, sometimes you have to throw a little bit of negligence over on somebody else, if there was anyone else negligent.

Mr. Bowers: May I further respond to that as well? I think one of the thrusts of our questioning here is that in this instance we are trying to establish from the conduct of all the government people with, including Mr. Vaught, and the others, that they were the acts of reasonable and prudent persons. Now our line of questioning goes to show that Mr. Vaught, even with his experience in this, in these

[370] lines, did not think it important enough to get into contact with the persons who would have the authority to deal precisely with this matter, even in view of his long experience, and therefore, the acts of the other people involved were equally as reasonable. And it is not a question of trying to show negligence on his part at all, it is just showing that the people were acting sensibly in this thing, there was no negligence.

Mr. De Anda: If it is the government's contention that Mr. Vaught was negligent and brought this about, I would like to amend my pleadings, because the government is liable for Mr. Vaught in his line, as it is for the Marshal himself.

The Court: I am not going to admit it for that purpose. I am going to admit it because it reflects on how serious he thought the situation was, I think.

Mr. Bowers: That's precisely our line of—

The Witness: —What is the question, do you recall?

[371] The Court: You might read the question again, if you will, please.

(The following question was read back by the Reporter and is as follows: "But yet, you didn't call Judge Connally in connection with this fear that Reagan Logue might have hurt himself if he were transferred from the hospital to the jail?")

By Mr. Pain:

Q. Would you answer the question, please, sir?

A. I did not call Judge Connally. One reason was I had learned he had already issued an Order committing him to the Springfield Hospital, and two, I had no occult powers, I could not tell Judge Connally, he would surely deny it, I did not have the advantage of hindsight. If I had known that he was going to kill himself that night, I would have spent the night or the day [372] in the cell with him.

Q. It wasn't very foreseeable that he would hang himself with the bandages, was it?

A. I had a very strong—

Mr. De Anda: —Hold on, hold on, it wasn't foreseeable, that's a matter for the Court to determine based on all the evidence.

The Court: Right, right, that's right.

Mr. Pain: Did you foresee that he might hang himself with a bandage, with the bandages?

Mr. De Anda: Well, I'm going to object—

The Court: —I think that foreseeing, that gets into the sort of thing that—

Mr. Pain: —It is an ultimate fact issue that will event to each individual that might have any thoughts about the matter.

The Court: Foresee is not the right word. I, I am going to sustain the objection as to the use of the



word, foresee, foreseeability. If he, in his own mind, thought he might, that's something else again, but foreseeability, that's, that's too much within the province of the Court.

Mr. Pain: Did you warn anyone that Reagan [373] Logue might hang himself with the bandages on his arm?

The Witness: I —

Mr. De Anda: —Just a moment, I don't think there is any testimony that Mr. Vaught even knew that the man had bandages on his arm, or what kind of a cell he was in, or anything about this, there's been no predicate laid for it.

The Court: I think that is, I don't believe you have laid a predicate for that.

By Mr. Pain:

Q. You did write a pre-sentence investigation on Reagan Logue, did you not?

A. Yes, it was limited in, to the latter part of his life.

Q. To what?

A. To the latter part of his life. In fact, the last four years of his life.

Q. Do you recall the contents generally of that pre-sentence investigation report?

A. No, I haven't read it in two years. Someone got my copy, some agent borrowed my copy, someone in

the government got my copy, and I haven't had access to it since then, but—

[374] Q. —All right—

A. —whatever is written there, I will not deny.

Q. I will show you this document here and then see if this is, refreshes your recollection as to whether or not the four or five pages constitute the pre-sentence investigation that you wrote on Reagan Logue.

A. (Looking at instrument) Yes, that, that appears to be, to be the copy of it. That might even be my copy, I, I don't know.

Q. Now what caused you to write this pre-sentence investigation report?

A. The request of Mr. Henry Griffin, the U.S. Probation Officer in Austin, Texas.

Q. And this was on the charge out of Austin, is that correct?

A. Yes, uh-huh.

Q. A misdemeanor charge?

A. Yes, sir.

Q. And the charge was possession of amphetamines, is that correct?

A. It seems LSD, as I recall, now I could be wrong again.

Mr. De Anda: Your Honor, if I can anticipate something that may happen here, I [375] have not seen that report and the witness said it was a four or five page report, or the government did, but they gave me no indication they were going to offer it and use it, and I have no objections to its use, but I do feel that, that one that lengthy, if, if he

is going to take communications out of it, that perhaps it would be more beneficial to have, to give the witness and I an opportunity to read it and see what it contains.

The Court: If you haven't seen it, why certainly you are entitled to, if you are going to use it in your examination of this witness.

Mr. Pain: Yes, sir, Your Honor. May I suggest that we make copies of it right now and give it to him?

The Court: That will be fine. How long will it take you?

Mr. De Anda: I don't know long long, it's four or five pages, but I would like to browse through it. I don't think it will take me over five or ten minutes.

The Court: Let's recess until 3:00 o'clock [376] and that will—

Mr. De Anda: —All right—

The Court: —give you a chance to have it copied and go over it, and then we will reconvene at 3:00 o'clock.

Mr. De Anda: Thank you, Judge.

Mr. Pain: Thank you.

(After a short recess, Court reconvened in the above entitled and numbered cause, all parties present and presiding as before and the following proceedings were had, to-wit:)

The Court: Please be seated.

Have you-all had the time you need, Mr. De Anda?

Mr. De Anda: Oh, yes, sir. I sure did. Thank you very much, Judge.

The Court: You may proceed, Mr. Pain.

[377] By Mr. Pain:

Q. Mr. Vaught, have you had an opportunity to examine the document I handed you a few moments ago?

A. Yes.

Q. Is this an accurate copy of the pre-sentence investigation report that you prepared for Judge Roberts in Austin?

A. Yes, sir.

Q. Would you read the first paragraph of Page 3 of that particular report?

Mr. De Anda: Your Honor, I'm going to object to his reading from any part of the report as being rank hearsay, or based on hearsay. He can ask him about times and some occasions, he can if there is any, but the only reason, I suppose, that he could introduce any part of that report would be to impeach the witness, if he said anything on the stand that was inconsistent with its contents. And he can interrogate, would be able to interrogate for that purpose, but just as far as reading part of the report into the record, I don't think it is admissible for [378] any purpose whatsoever.

Mr. Pain: Your Honor, I think it would have a bearing upon his direct testimony, possible impeachment of it, and in addition to that, the, the Plaintiff's Counsel went into the fact that Mr. Vaught prepared a pre-sentence investigation on Reagan Logue, and this is going to bring it out a little more. If he wants to, he can offer the particular report into evidence, but I think that there are portions of this that would be relevant to the case at hand, and should be read into the, into the record.

Mr. De Anda: Your Honor, the mere fact that he offers me a right to offer inadmissible evidence is not a cure to his inadmissible evidence, and I have no intentions of offering it at all.

Mr. Bowers: If it please the Court, I think it is further important that the witness has testified on direct examination about the probability of the rehabilitation of Mr. Logue. This goes to the damage issues, the probability of future earnings, and I believe the report does contain [379] inconsistent statements which are the writings of this witness, inasmuch as he testified to these opinions, and I think we are entitled to show the consistent statements and inconsistent statements, parts of it, by way of impeachment.

The Court: Well, it's kinda hard for me to see how a report that can be used by a Judge in sentencing a man to the penitentiary, which relates to his background, should not be admissible, admissible—

Mr. De Anda: Your Honor—

The Court: —in this sort of a hearing because we are concerned with his background.

Mr. De Anda: Yes, sir, Judge, that would be right and I think that there, there are appropriate means of showing the youngster's background that are, would not deprive me of my right of cross examination or to determine the sources, but to give the government a blanket authority here to go into a report that contains, as pertains to Reagan Logue, and not—we might talk in the field of expertise, to things in general that are generally [380] based on hearsay, such as statistics and that sort of thing, but we, we are talking about Reagan Logue, and insofar as any statements that are in that report, they are obviously based on hearsay or, hearsay, or the report says, "So and so told me this," and I don't think that that would be, while it might be something the Court could consider because the Court can consider anything, and there are no rules of evidence as far as sentences goes, you can go to any source you want to to assess a sentence, and the Probation Officer can, too, but insofar as the damage suit, a damage suit is concerned, there are some limitations in the rules of evidence that do not govern presentencing investigations, and I, I want to point this out to the Court.

The Court: I realize that, but I, I am going, I am going to do this—I am going to admit the report, I am going to admit it for this reason only—I'm not going to take the time to try to pick out the parts, I am going to admit the report to [381] the extent

that it is necessary for them to use to impeach anything that the witness may have said on the stand, which is in, which he contradicts in that report. I am not going to admit it for any other purpose.

Mr. De Anda: All right, in other words, you will let them refer to the report as far as it might impeach his testimony?

The Court: That's right.

Mr. De Anda: Limited to that purpose, and insofar as impeaching his testimony, I think it is proper.

The Court: You may proceed.

By Mr. Pain:

Q. Would you please refer to Page 3 of the second paragraph, and again, before you read that, I will ask you if this was, this report was prepared by you?

A. Yes, sir.

Q. And this reflects the results of your investigation of Reagan Logue, is that correct?

A. Yes, sir, uh-huh.

Q. Would you read the second paragraph of Page 3?

A. "For most of the previous year, Logue had been [382] one of the major suppliers of marijuana and narcotics to high school students in Corpus Christi. Among his associates in this traffic were co-defendants Wilkerson, Gill, and Ennis."

Mr. De Anda: Your Honor, may I take the witness

on voir dire to ask him just simply what the source of this information is, whether he obtained it from Reagan Logue or whether it was obtained from some other source.

The Court: I will permit that.

Mr. Pain: All right.

The Witness: From other sources.

Mr. De Anda: All right, I would, again, in view of that, Your Honor, reiterate my objection, that this is all rank hearsay, that it is prejudicial and improper, and deprives me of the right of cross examination of these sources. And it is not really admissible for any purpose.

The Court: Let me ask the witness a couple of questions. Did you ever ask Reagan Logue about supplying others with marijuana?

[383] The Witness: We talked of the extent of his activities, but not, I don't recall asking him about supplying the high school students, and we did not discuss it at any length. He denied having any involvement in much marijuana activities in this area.

The Court: But your inquiry from him was very limited, it was with regard to this particular phase of your report?

The Witness: Yes, because he had previously denied that he did not deal, just to a limited extent in marijuana, and was more of a user than a seller.



The Court: What is the contradictory testimony that contradicts that report, that part of the report?

Mr. Pain: Your Honor, as I recall his direct testimony, he testified that as an expert, and in his capacity as Probation Officer, that he felt that there was a very good chance that Reagan Logue would develop into a fine, upstanding citizen, and it is, I think that this is inconsistent with that.

[384] The Court: Your position is that, with that kind of knowledge that—

Mr. Pain: —It is just inconsistent with his direct testimony.

The Court: Inconsistent with his testimony—

Mr. Bowers: —The purpose of this is to show the knowledge that this gentleman had at hand, and not for the exact truth of it—

The Court: —I will admit it for that purpose.

Mr. De Anda: Your Honor, let me just add this to the request—my memory, and perhaps the Court's, is that this is not inconsistent with his testimony at all. Mr. Vaught stated that, in the interrogation and cross examination, that, that Reagan Logue was, was a more extensive user or participant in narcotics, from his information, the information that he had, than these other people, and he also testified, of course, that in his opinion, and his opinion was based not on this report but on many conversations which

he [385] had with Reagan Logue subsequent to the fact, to this report. And that there had been absolutely nothing in that statement that would be inconsistent with what he has testified to. In fact, it's consistent with it, in that he has testified that Reagan Logue was a more extensive user and more extensively involved in narcotics than most youngsters his age, I believe that is his testimony, and—

The Court: —I think that is true, Mr. De Anda, but with this information, from other sources, and not inquiring of Mr. Logue with regard to it, it seems to me to effect the validity of any opinion that he might have with regard to his rehabilitation.

Mr. De Anda: All right, sir.

By Mr. Pain:

Q. Would you turn to Page 4 and read the last paragraph therein, please, sir?

A. "School officials, as well as the police, knew that Logue was involved in an extensive marijuana and narcotics operation in the local [386] high schools, and for other reasons, they were extra glad that Logue graduated but not happy for Logue."

Mr. De Anda: How in the world does that statement impeach anything that this witness has said? Now that's just trying to prejudice the Court in this case, and it is highly inflammatory.

The Court: I don't see any relevancy to that and I will sustain that, and that will be stricken.

By Mr. Pain:

Q. Would you now, I notice on Page 6, that there is a summary, is that correct?

A. Yes, there is.

Q. And the purpose of the summary is to generally summarize for the benefit of the Court reading it for sentencing purposes, to give him a brief synopsis of the, of the prior portions of the report, is that correct?

A. Right, uh-huh.

Q. Would you read the last sentence of the first paragraph of the summary?

A. The sentence in the first paragraph—"His involvement in drug traffic has been extensive [387] and his attitude apprehensible leaving little to warrant consideration of leniency."

Q. In view of what is written in this pre-sentence investigation report by yourself, are you still of the same opinion, that Reagan Logue had a very good chance, or had a good chance of becoming and developing into a good, upstanding citizen of the community?

A. When this was written I, I had a somewhat different opinion than what I had of Reagan after talking to him for many hours subsequent to this. It was subsequent discussions when I found out about Reagan. At the time this was written, this is what, what I had learned, the way I felt about him, though he was not uncooperative.

Q. What is the date of this report?

A. May the, May the 6th.

Q. What year?

A. 1968.

Q. Just a few weeks prior to his death?

A. Yes, but in those weeks, when he would come into my office and make, we would have these long and very serious to him, very serious discussions.

[388] Q. Did you make any amendment to this report to Judge Roberts as a result of your subsequent conversations with Reagan Logue?

A. No, but I didn't, I did intend to supplement it.

Q. But you didn't do it?

A. Well, for obvious reasons he never was sentenced.

Q. Do you remember, do you know, do you know, do you remember the date that Reagan Logue was to be sentenced before Judge Roberts?

A. No, I don't remember.

Q. Does May the 23rd, 1968, refresh your recollection?

A. No, I don't, I, I, I thought it was in June, I'm thinking of June the 6th.

Mr. Pain: We will pass the witness, Your Honor.

The Court: Mr. De Anda?

[389] REDIRECT EXAMINATION

By Mr. De Anda:

Q. Just one or two other questions, Mr. Vaught, the office of—well, let me ask you this—the matter has come up as to, in one, in one of the statements that was admitted, there was a statement to the effect that perhaps you did not press Reagan Logue

as to his involvement in narcotics, especially as pertains to these other young men that are mentioned—

A. —Uh-huh.

Q. Do you, why, why was that, why did you not press it?

A. This, first was his, first was his general denial, and second, because I had a stack of affidavits from other students who, which I thought was sufficient for my purpose.

Q. All right, in other words, your purpose was not to convict or conclusively prove to Logue what information you might have, but your purpose was to let the Judge know?

A. Right.

Q. And would it be prudent to let a person like Reagan, under those circumstances, perhaps [390] divulge to him the information that you had from other people and this sort of thing?

A. No, I did not tell him of the affidavits.

Q. Customarily, would you do such a thing in any circumstances?

A. No, I would not.

Q. Now during the course of your conversations with Reagan, both before and subsequent to the report, what was his feelings towards his adopted father, if he had any, did he express any feelings to you about him, or were you able to make any judgment as to how he felt about Mr. Logue?

A. Oh, I felt there was mutual respect and genuine concern on the part of Mr. Logue for Reagan. I thought he did the best that he knew to do, and I, I think that the relationship was more of respect

than the deep meaningful relationship between a parent and—

Q. —I'm talking about what Reagan told you, I am confining my comments to what Reagan told you.

A. About Mr. Logue?

Q. Yes, sir, from what Reagan told you, did he, did he love his adopted father?

[391] A. Yes, I think it was a deep and abiding respect for Mr. Logue.

Q. All right, how about his mother?

A. I thought he was closer to his mother. I thought he was, even though in that there was some deficiencies, there was some deficiencies in the quality of the entire personal relationship.

Q. All right.

A. Probably because of the history of the emotional instability.

Q. Did he ever express anything about his mother because of his involvement in these criminal matters?

A. Oh, yes, and his first request to me was that I not contact her about this matter, and I respected it; therefore, you will notice there is nothing in this report prior to the age that Reagan and Mr. Logue had helped me with.

Q. But he asked you not to talk to his mother about it?

A. Yes.

Mr. De Anda: I believe that's all, thank you very much, Mr. Vaught.

Mr. Pain: I have no further questions, Your Honor.  
[392] The Court: You may step down, Mr. Vaught.

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## WITNESS EXCUSED

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(Discussion held off of the record.)

Mr. De Anda: Your Honor, I would like to read into the record, this was provided to me by the Government's Counsel, it is from the daily log of the Marshal's office as completed by Mr. Del W. Bowers, Jr., the Deputy Marshal that we have been talking about here. And it shows that—the only thing that I was interested in, (indicating to Counsel for the Government) that is on May the 24th, 1968, Mr. Bowers went to Memorial Hospital, arriving at 3:15, is this the time he arrived at the hospital or where, I guess that would be it?

Mr. Pain: Apparently so.

Mr. De Anda: Arriving at 3:15, leaving at 3:45, and it can only be P.M., from the 8:00 A.M. to 4:00 P.M., at Memorial for the purpose of readying a prisoner for [393] transfer to jail, and then from making a trip to the Nueces County Jail, arriving at the jail at 4:00 P.M., and leaving at 4:45, to commit Logue to Nueces County Jail, and instructing jail personnel as to the, as to security for the above prisoner. I just thought that rather than introduce this, I would just read that portion of it into the record.

The Court: What were those dates again?

Mr. De Anda: Beg pardon?

The Court: What were the dates, I mean the times?

Mr. De Anda: The time arriving at Memorial Hospital was 3:15 P.M., and leaving Memorial at 3:45 P.M., and arriving at the Nueces County Jail at 4:00 P.M., and leaving the Nueces County Jail at 4:45 P.M., on May the 24th, 1968.

The Court: All right, that's fine.

Mr. Pain: Your Honor, that particular document that he is referring to is attached to the deposition of Del W. Bowers, which will be introduced into evidence.

Mr. De Anda: Oh, I forgot about that, you [394] are going to offer it anyway?

Mr. Pain: Yes, I will offer it.

Mr. De Anda: All right, sir, we have also stipulated, again, to save a little time here, on life expectancy. Mrs. Blouin testified, I believe, that she was thirty-eight years of age, and according to the Health, Education and Welfare Life Expectancy Tables, a person thirty-eight years of age has a life expectancy of thirty-five point nine years; and a person fifty-four years of age, which I believe Mr., was Mr. Logue's testimony, has a life expectancy of twenty-two point three years.

Mr. Pain: We have no objections to that.

Mr. Bowers: We want it understood, Your Honor,



that the stipulation does not mean that we are necessarily stipulating that that would be the life span of these particular individuals, that is merely a—

The Court: —I understand it is just, it is just—

Mr. De Anda: —It's just a person, Judge, that's all.  
[395] The Court: That's right.

Mr. De Anda: Judge, I believe I am going to rest. If I might just look through my notes here to be certain—

The Court: Go ahead.

Mr. De Anda: To look and see that I don't have anything else— (Looking through instruments)

There are certain admissions of fact in the Pre-Trial Order, as well as the Defendant's Contentions, and I don't think, I don't think I need to formally introduce those in evidence. They are before the Court and I think they are, that his contentions are before the Court, so I don't believe it is necessary for me to do so, and so just to save time, because I believe it does narrow the issues down, and so at this time, Your Honor, the Plaintiffs rest.

The Court: All right.

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PLAINTIFFS REST

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[396] The Court: Is the Government ready to proceed?

Mr. Pain: Your Honor, at this point I would move the Court for a Judgment of Dismissal, Judgment for the Defendant, for the fact that the Plaintiff has not shown a prima facie case against the Defendant. This is, as you are aware of, a Tort Claims case, and the Tort Claims Act states that the Plaintiff must show, by a preponderance of the evidence, negligence on the part of an employee of the United States, acting within the scope and course of his employment. Now apparently about the only employee of the United States that he has any chance of pinning any negligence on was Deputy Marshal Bowers, in taking the boy from the hospital to the jail. Now as the prior evidence indicates, well, before I get to that, and as you are probably aware of, and I think the record will reflect, Mr. Bowers is now deceased, having passed away about two or three months ago, therefore, the reason for his [397] non-presence here. Now he has not shown, shown any negligence on the part of Mr. Bowers. I think it stems around the fact of the boy's transfer from the hospital to the jail, he is alleging that there was negligence as a result of the boy being taken from the hospital to the jail, and as a result of that negligence, there was, the hanging occurred, and the damage to the Plaintiffs. Now the negligence, if any, which may have been attributed to the United States, must have been by Deputy Marshal Bowers, and that must have been surrounding the particular transfer, or the taking from the hospital to the jail. It also is, there is our issue of

negligence which will also center around whether or not a doctor released him.

Now I would invite the Court's attention to the deposition of Dr. Shannon Gwin—

The Court: —Mr. Pain, this is before the Court, and I am not prepared at this point to sustain a Motion to Dismiss at the close of the Plaintiff's case. I [398] will carry it along and I am sure that there will be questions of law that will have to be argued before a final decision is made anyway. If the Government would like to furnish me with some cases that pertain particularly to the points that you might make, I will be glad to consider them, but I think I will just carry it along and let's go ahead with your testimony.

Mr. Pain: All right, sir. We will call Mr. Robert May.

The Court: Mr. De Anda—

Mr. De Anda: Yes, Your Honor—

The Court: —If you don't mind—

Mr. De Anda: —Pardon me, I'm sorry.

The Court: You haven't been sworn yet? Swear him and then I want to ask him a question.

Mr. De Anda: All right, sir.

(Oath administered to the witness by the Deputy Court Clerk.)

The Court: Come around and have a seat over here.  
[399] You wouldn't mind at the conclusion of this afternoon, if you would leave with me the citations that you rely upon to establish your position as far as your prima facie case is concerned, if you would, I would appreciate it.

Mr. De Anda: Yes, sir, Judge, but there's one other problem here. Is this the witness that you wrote me a letter on?

Mr. Pain: Uh-huh.

Mr. De Anda: I don't believe he is on the witness list here.

Mr. Pain: Isn't he?

Mr. De Anda: May—May I just have a second here to talk with Counsel here?

The Court: All right.

(Discussion held off of the record.)

Mr. Pain: Your Honor, through inadvertence, I failed to put this particular witness on my list of witnesses in the Pre-Trial Order, and that was it.

Mr. De Anda: He was mentioned in Mr. Bower's deposition, Judge, the name just didn't ring a bell with me.

[400] The Court: Do you, you have no objections, then?

Mr. De Anda: No, I don't.

# ROBERT W. MAY,

was called as the first witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

## DIRECT EXAMINATION

By Mr. Pain:

Q. Would you state your name, please?

A. Robert W. May.

Q. How are you employed?

A. As Special Agent with the United States Customs.

Q. Where are you stationed?

A. At Corpus Christi.

Q. How long have you been such a Special Agent?

A. I've been a Special Agent since March of last year.

Q. March of 1970?

A. Yes, sir.

Q. How were you employed in May of 1968?

[401] A. I was Customs Port Investigator here in Corpus Christi.

Q. Did you have the occasion to remember the facts

surrounding an arrest that you made with one Del W. Bowers in May of 1968?

A. Yes, sir.

Q. Do you remember the date?

A. Not the day of the month, no, sir.

Q. What were the circumstances surrounding that, how did you first become acquainted with the—

A. —Mr. Bowers called our office asking assistance in making an arrest on a warrant.

Q. What kind of assistance did he need?

A. He was the only, at the time he said, he said he was the only Deputy Marshal here and he wanted someone to go along with him to make the arrest.

Q. I see, and who was the person to be arrested?

A. Reagan Logue.

Q. Do you recall where Reagan Logue lived at the time?

A. Not the address, no, sir. It was here in Corpus Christi on the west end.

Q. All right, did you go with Deputy Marshal Bowers as requested?

[402] A. Yes, sir.

Q. Was anyone else with you?

A. Another Customs Port Investigator, Carlos Valverde.

Q. And the three of you went to Reagan Logue's house?

A. Yes, sir.

Q. What occurred when you arrived there?

A. Well, Mr. Bowers knocked on the door and announced his purpose there.

Q. And what is the purpose that he announced?

A. To arrest Reagan Logue on a bench warrant

that had been issued out of, I believe it was Laredo District.

Q. Who answered the door?

A. I'm not sure, but I think his mother came to the door, and he asked for Reagan, and then Reagan came to the door.

Q. Was it a lady that answered the door?

A. Yes.

Q. About how old was she?

A. Oh, probably around forty, forty-five, somewhere along in there.

Q. At this point in time, there was you, and Deputy Marshal Bowers, and Mr. Valverde at the front [403] door, is that correct?

A. Yes, sir.

Q. All right, what occurred after Mr. Bowers asked the lady about Reagan Logue?

A. He came to the door without a shirt on and Bowers stated the purpose for us being there, and we entered the house, then, for the purpose of allowing Reagan to get a shirt out of his room.

Q. Who went into the house?

A. All three of us went into the house, Deputy Bowers, and myself, walked back with Reagan toward his bedroom, and Carlos Valverde stayed near the front door.

Q. Why did you go back with Deputy Bowers to his bedroom?

A. Just to accompany him. Mr. Bowers had information that he probably, he might have trouble arresting the fellow, the young man.

Q. Well, why did the boy go back in the bedroom, to get a shirt?

**Supreme Court of the United States**

No. **72-636**

**Orval C. Logue, et al.,**

**Petitioners,**

**v.**

**United States**

**ORDER ALLOWING CERTIORARI. Filed January 8 -----, 19 73.**

The petition herein for a writ of certiorari to the United States Court of Appeals for the **Fifth -----** Circuit is granted.



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APPENDIX

MICHAEL RODAK, JR., CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1972

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**No. 72-656**

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**ORVAL C. LOGUE, ET AL.,**

*Petitioner,*

**vs.**

**UNITED STATES OF AMERICA,**

*Respondent.*

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE FIFTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED OCTOBER 28, 1972  
CERTIORARI GRANTED JANUARY 8, 1973**

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E. L. MENDENHALL, Inc., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

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A. Yes, he had no shirt on at the time.

Q. Upon arrival in the bedroom, what occurred then?

A. Well, he got a shirt and had some discussion there, he wanted to see the warrant right then, [404] and Mr. Bowers didn't have the warrant with him, and he explained that it would be shown to him whenever it arrived from Laredo.

Q. Did you notice anything unusual about his bedroom or the surroundings in the room?

A. Well, it had, he had kinda wildly painted it, you might say, it looked like it was spray can painted, it had been sprayed across the ceiling and had made a "X" across the ceiling, and certain designs on the walls and stuff like that.

Q. Did you notice anything unusual in the room?

A. The odor of airplane glue, airplane-type glue.

Q. Was there a very strong odor?

A. Strong enough that when you walked, whenever you first walked in the room at the door, why—

Q. —Could you smell it when you walked in the front door?

A. No, I didn't notice it when we walked in the front door.

Q. But you did notice it when you walked into Reagan's bedroom, is that correct?

A. Uh-huh, his door was closed whenever we approached his door.

Q. Did you notice anything else in there?

[405] A. There was a brown paper sack sitting on the floor there with nothing in it, that I could tell, anyway.

Q. Did you notice anything unusual about the sack?

A. No, it was just, well, I just noticed it sitting on the floor, in other words, I didn't look straight down the sack.

Q. What happened then?

A. After some discussion about the warrant, Reagan's mother finally convinced him to go with us, and I believe, if I am not mistaken, he was allowed to call his attorney, which at that time, I believe, was Marvin Foster, and he advised him, I think, to go ahead and go with us.

Q. This call was made from the house there, is that correct?

A. Yes, uh-huh.

Q. And then you proceeded to put Reagan in the car, is that correct?

A. Yes, he went with us after, after his mother talked to him, or after the lady there talked to him, I'm not sure whether it was his mother or not, but after the lady there talked to him and his attorney talked to him, he went with us.

Q. There was no struggle, was there?

[406] A. No, just the discussion up until the time we convinced him he was going to have to go with us.

Q. And then did you accompany Deputy Bowers with Reagan to the jail?

A. Yes.

Q. And which jail was that?

A. The Nueces County Jail.

Q. Here in Corpus Christi?

A. Yes.

Q. And did you accompany them to the booking desk?

A. Yes.

Q. What did you do then?

A. Well, Mr. Bowers had him booked as a Federal prisoner, and they took his belongings off of him.

Q. And then what did you do, if anything?

A. Nothing, that was about it, that was about the extent of our involvement in the case there.

Q. You went on back to your customs duties?

A. Yes, uh-huh.

Q. Did you notice any particular odor about the person of Reagan Logue?

A. No, actually we didn't go straight to the jail. We went by the Commissioner's Office and then went up to the jail.

[407] Q. Uh-huh.

A. To the U. S. Commissioner, which is the U. S. Magistrate now, and which is J. C. Martin.

Q. Did you smell glue or a smell of glue around Reagan Logue during this period of—

Mr. De Anda: —Your Honor, the witness has testified he didn't smell anything, and he's leading him, it's obviously a leading question and contrary to what the witness has already testified to.

The Court: Don't lead the witness.

Mr. Pain: I will pass the witness; I have no further questions now.

## CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. May, I know it's been a long time, and it wasn't your arrest to start with, is that right?

A. No, sir.

Q. Actually, as I recall Mr. Bowers testimony, and I refer to it to refresh your recollection, I believe you were, you were, as you say, you were asked to go with him or he asked you to go with him?

[408] A. Yes, sir.

Q. Because you knew where Reagan's house was, at least that was the way I understand his testimony, would that be correct or incorrect?

A. Well, now that you mentioned it, it is familiar, but—

Q. —All right, okay, now after you got to the house, if I remember again, if I remember Mr. Bowers' testimony, he said a young lady, a pretty young lady, I believe he described her as, came to the door first, do you recall?

A. There was a pretty young lady there in the house, and as best I recall, she was pregnant.

Q. All right, I wouldn't figure you fellows would forget that. All right, now after that, afterwards, when Blacki told this young girl why he was there, that then an older lady came to the door, or not, I'm sorry, that then Reagan came to the door and that he was shirtless, he had a pair of levis on, do you remember that?

A. He came to the door before we actually was admitted to the house and he didn't have a shirt on.

Q. All right, and then as I recall again, Mr. Bowers'

investigation of this thing, he asked Reagan if [409] he wanted to put his clothes on, but that he would have to go in the house with him if he wanted to do that, and that Reagan told him he did want to get his clothes on, and so that was the reason that you actually made an entry into the house.

A. Yes, that's the reason for going into the house, was allowing him to get a shirt.

Q. Do you recall Mr. Bowers telling Reagan that, for him to go back and get his clothes, that he would have to accompany him, do you remember that?

A. The way I understood, the way I remember it is, that Reagan wanted the shirt, and in other words, Mr. Bowers informed him he was going to have to come with us, and he wanted to know if he could go back to his bedroom and get a shirt before he left, and Mr. Bowers said, "You can, but we will have to accompany you."

Q. All right, and then, then Reagan told Mr. Bowers to come ahead and you-all went back there to get his clothes?

A. Yes.

Q. All right, now in the room, you have described some rather bizarre paintings on it, was it [410] spray paint?

A. Yes, sir, it appeared to be that type of paint.

Q. It was all over the walls?

A. Yes, sir, across the ceiling.

Q. I think Mr. Bowers said he had never seen a room painted like that before, would that be a fair description of it?

A. I have never seen one painted like that before, either.



Q. It looked like the room was frequently painted, I mean all of the job wasn't done at the same time, it was sprayed—

A. —It was sprayed different colors.

Q. All right, and also didn't you notice some water, or surfboards, surfboards, were there surfboards in there?

A. I don't recall.

Q. Were there cans of paint in there and cans of lacquer?

A. If there was, I didn't see those.

Q. You don't recall seeing them? You have described the smell of glue and could that smell have been paint or lacquer, as well as what you have described it as airplane glue, or are you such an expert at smelling things like that, that you [411] can tell us?

A. I have used several cans of spray paint in my life and I never smelled one in my life that smelled exactly like airplane glue.

Q. How about lacquer?

A. Same thing.

Q. Lacquer has a similar smell?

A. To me, it is different, now I don't know.

Q. All right, okay. You had no problems with Reagan, getting him, other than the inquiries about the warrant, whether or not you had a warrant, there was no particular problem with Reagan Logue, was there?

A. The main problem seemed to be that he wanted to see the warrant right then. He was of the opinion that he had to be shown the warrant before being put under arrest.

Q. Is that a problem, when somebody asks you for a warrant?

A. Well, it is characterized as a problem, it may not be.

Q. Okay, when you got to the jail, do you recall Reagan contending that he was God?

A. He signed the register, the jail receipt, "God", and then they told him that wouldn't be [412] sufficient, the jailer told him it wouldn't be sufficient, and he wrote, "Logue, God Logue."

Q. God Logue?

A. Yes, sir.

Q. All right.

Mr. De Anda: Thank you very much, that's all.

Mr. Pain: I have no further questions.

The Court: You may step down.

(Discussion held off of the record.)

Mr. Pain: Your Honor, may this witness be excused?

The Court: Yes, you may be excused.

The Witness: Thank you.

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WITNESS EXCUSED

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Mr. Bowers: May we, could we withdraw the deposition of Deputy Bowers, please, from the record?

Mr. Pain: Your Honor, at this time point, I will offer the deposition of the witness, Del W. Bowers, Jr., deceased, by [413] way of a deposition taken in Houston, Texas, on October the 22nd, 1970, with Plaintiffs' Counsel, Jim De Anda, being present at such deposition, and I will offer it as part of our evidence in this case after reading it into the record.

The Court: All right.

Mr. De Anda: Your Honor, as we go along, I may have some objections to some portions that he wants to introduce—

The Court: —That's all right, you can make your objection at the time, I assume. Did you take it by agreement?

Mr. De Anda: Yes, sir, and it is not signed, but Mr. Bowers is dead and I have no objections to their reading it.

The Court: Well, there was no reason to make your objections at the time of the taking of the deposition—

Mr. De Anda: —We did agree that we would preserve our objections until the time of trial; however, in view of the fact that Mr. Bowers is deceased, I would not object to the form of the question, I think.

The Court: All right.

[414] DEPOSITION OF DEL W. BOWERS, JR.,

the witness having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Pain:

Q. Will you please state your name, please?

A. (By Mr. Bowers) Del W. Bowers, Jr.

Q. That is Del W.?

A. Yes.

Q. How are you employed?

A. At the present time?

Q. Yes.

A. Deputy Sheriff at Del Rio, Texas, Val Verde County.

Q. How long have you been so employed?

A. Since the 1st of September.

Q. Of 1970?

A. Yes.

Q. And you do live in Del Rio, Texas, now?

A. Right.

Q. How long have you lived there?

A. Since about the middle of August.

Q. Where did you live prior to living in Del Rio?

[415] A. Edinburg, Texas.

Q. How long had you lived there?

A. Since April, 1960.

Q. How were you employed prior to your job as a Deputy Sheriff in Val Verde County?

A. As a Deputy U. S. Marshal.

Q. Where were you stationed?

A. Edinburg.

Q. How long were you a Deputy U. S. Marshal?

A. From December, '62, until June of '70.

Q. What were your duties as a Deputy United States Marshal?

A. I was at Edinburg, Texas, as a U. S. Deputy Marshal.

Q. A U. S. Deputy Marshal for the Southern Judicial District of Texas, is that correct?

A. That is correct.

Q. Who was your immediate supervisor?

A. Gerald L. Jones.

Q. Now where was he stationed during the time he was your immediate supervisor?

A. In Brownsville, Texas.

Q. And who was your supervisor after Deputy Marshal Jones?

A. You mean the—

[416] Q. —The next step up?

A. Casey Slocomb of Houston, Texas, Chief Deputy U. S. Marshal.

Q. Will you describe the duties that you performed as a Deputy U. S. Marshal, generally?

A. Well, a Deputy U. S. Marshal is the law enforcement arm of the Federal Court. Included in our duties, of course, is the keeping of order whenever we are in Court; we also attend Court; serve all Federal processes, summons, complaints, warrants. We also have custody of all Federal prisoners.

Q. In your duties as a U. S. Deputy Marshal, did you have occasion to make arrests?

A. Yes, sir, we do that quite often.

Q. And upon what authority do you ordinarily make arrests?

A. Well, by warrant, bench warrants, warrants of arrest, orders from the Court.

Q. Okay, what is the difference between a warrant and a bench warrant?

A. Well, just a plain warrant is normally issued by the United States Commissioner. The bench warrant is issued by the Court, the Judge.

Q. Is it always necessary for you to have the [417] piece of paper representing the warrant in your hands when you make an arrest?

A. No, it is not.

Q. And have you very often made arrests without the warrant in your possession?

A. Yes, quite often.

Q. Is that part of your ordinary policy and procedure as a Deputy U. S. Marshal?

A. Yes, it is.

Q. Are you generally familiar with the facts of this particular lawsuit?

A. Yes, I think I am.

Q. It is a lawsuit whereby the survivors of Reagan Logue are suing the United States Government for damages for allegedly causing the death of Reagan Logue, is that your understanding?

A. Yes, that is my understanding.

Q. Do you recall the circumstances surrounding the origination of this lawsuit?

A. Yes, sir.

Q. Do you recall making the arrest of Reagan Logue?

A. Yes, sir.

Q. And to the best of your recollection, when was that?

A. May I refer to my report that I have?

[418] Q. Yes, you may.

Mr. Pain: Then I continue—"For the record, I believe Plaintiff's—

Mr. De Anda: —That's irrelevant, why don't you go on unless you just want to read it.

Mr. Pain: No, the next question is—

By Mr. Pain:

Q. When was that time of the arrest that you made of Reagan Logue?

A. Do you want me to relate what happened or the exact time of the arrest?

Q. No, just give me the day, and to the best of your knowledge, the approximate time of the day that you first received information that there was a warrant outstanding for the arrest of Reagan Logue.

A. About 11:00 A.M., I received a telephone call from George Bennett, Deputy Marshal in Laredo.

Q. And what did he tell you?

A. He stated the bench warrant had just been issued for Reagan Logue.

Q. What did you do then?

A. Well, during my conversation with him, he informed me that Logue lived in Corpus.

Q. Where were you at the time you received this [419] telephone call?

A. I was in the U. S. Marshal's Office in Corpus Christi.

Q. But your duty station was ordinarily Edinburg, is that correct?

A. That is true, but I was detailed to Corpus Christi to attend Court, and also to take care of the station while Deputy Marshal Schorre was on prisoner duty.

Q. For purposes of the record, would you spell Deputy Marshal Schorre's last name?

A. (Spelling) S-C-H-O-R-R-E.

Q. And you were temporarily on duty in Corpus Christi, Texas, in your capacity as a Deputy United States Marshal at the time you received this call from Deputy United States Marshal George Bennett, to the effect there was an outstanding warrant for the arrest of Reagan Logue, is that correct?

A. That is correct.

Q. After you received this telephone call, what did you do?

A. I contacted the Customs Agent, Earl Simmons, by telephone.

Q. Why did you do that?

[420] A. Well, I had been informed that they knew his address because of a prior case on Logue from Judge Roberts' Court in Austin.

Q. A prior case Customs had against Logue, that was your information?

A. Yes, and I believe in my conversation with Bennett, I believe he told me that the Customs Agent in Corpus Christi could assist me with Logue's whereabouts.

Q. All right, after you called—

A. —Earl Simmons.

Q. Earl Simmons, what did you do?



A. Well, Simmons told me on the telephone that Agent May and Valverde were familiar with the subject.

Q. Were these Customs Agents?

A. Yes.

Q. All right.

A. And they knew his address and they would assist me.

Q. All right, did they assist you?

A. Yes, they came to the Federal Building and I got in their car, and they took me to 425 Longview.

Q. And—

[421] A.—In Corpus Christi.

Q. And the purpose of this trip that you took in the company of the Customs Agents was to execute the arrest warrant that was outstanding for Reagan Logue, is that correct?

A. That is correct.

Q. All right, you arrived at this address, and what was the address again, please, sir?

A. 425 Longview.

Q. You arrived at that address, then what did you do?

A. Well, to the best of my recollection, I went to the front door, Customs Agents May and Valverde accompanied me.

Q. Did you knock on the door?

A. Yes, I knocked on the door and there was a young girl came to the door. I would say she was probably from sixteen, eighteen, or nineteen years old, she was a pretty young girl.

Q. Did you identify yourself to her?

A. No, I did not. I asked her if Reagan Logue was at home, and I would like to talk to Reagan.

Q. Did she identify herself to you?

A. No, she did not.

Q. What did she say after you inquired about Reagan [422] Logue?

A. She said she would get him, and she went back in the house, shut the door, and just three or four, two or three or four minutes, why a young man came to the door just dressed in levis, no shoes, no shirt.

Q. At the time she shut the door to go get this young man, were you and the two Customs Agents outside?

A. Yes, we were standing outside the front door.

Q. All right, now a young man appeared at the door, is that correct?

A. He came to the front door and came out on the little porch, the foyer in front of the house.

Q. Did you talk to him?

A. Yes, I identified myself, asked him if he was Reagan Logue, and he said he was.

Q. Now at the time you identified yourself, talked to him at this initial meeting, were the Custom Agents, May and Valverde, in hearing distance and in your presence?

A. Yes, they were.

Q. What did you subsequently say to this individual that showed?

A. I told him I had a warrant for his arrest, and [423] that he would have to go with me to the Commissioner's Office and to jail.

Q. Did you ask if he was Reagan Logue?

A. Yes, I asked him when he first came to the door if he was Reagan Logue.

Q. Did he acknowledge that fact?

A. He did.

Q. Then what happened?

A. Well, at this point, after I informed him that I had a warrant for his arrest, he wanted to know what for, and I told him, and then I asked him if he wanted to get shoes and socks and a shirt or any other clothes, and he said that he did. And about this time, I believe there was a lady, another lady came to the door, which I assumed was his mother, or the lady of the house, and I told her—she asked him what was going on, and he told her that I was there to arrest him again, he was being arrested again.

Q. Did he say anything to her at that time?

A. Well, he turned to her and said that, "They have come to arrest me again," and he says, "This is something else besides the case in Austin." And I told him that he would have to either get his folks to bring some clothes outside for him, [424] or if he went inside for the clothes, I would have to accompany him inside. This lady was standing there, she was present, and she said, "Come on in and let's get him dressed."

Q. Did you go in?

A. Yes, I did.

Q. Did the Customs Agents go in?

A. Custom Agent May went in with me.

Q. Valverde stayed outside?

A. Yes.

Q. After you and Custom Agent May went inside the house, what occurred then?

A. Immediately, when I walked in the front door, I smelled a very strange odor. Right at first I thought maybe somebody was painting the house, it smelled like, in other words, a very unusual smell. Later I determined, from my independent determination, from my experience, that it was the smell of glue is what I figured out the smell was.

Q. You came to the conclusion that the smell you smelled upon entering the house was glue?

A. Yes.

Q. Before you go on any further, did you first recall this smell as being glue when you walked [425] into the front door of the house?

A. Well, when I immediately smelled something strange, I recalled the smell of glue, and it was my judgment it was glue.

Q. And this was when you walked in the front door of the house?

A. The very first thing, when I walked in the front door.

Q. Then what happened?

A. As we proceeded on down the hallway and went into a door, which turned out to be his room, and the further we would go down the hall, the smell was much stronger.

Q. This glue smell was much stronger?

A. Yes, it was.

Q. As you went into Reagan Logue's room?

A. Yes.

Q. His bedroom?

A. Yes. It was a very large room as compared to most bedrooms, and had one of these, what kind of paintings—psychedelic stuff all over the walls, different to any room I had ever been in.

Q. Was Reagan Logue present in the room at the time you went in?

A. He was present at all times.

[426] Q. Was Agent May also present?

A. Yes.

Q. Was the older lady also present?

A. I think she stood in the doorway. We had quite a bit of conversation with him. I wanted him to get dressed, and I stated I had a warrant for his arrest, and he said, "What do you mean, a warrant for my arrest?" Of course, I told him I did have, and it took him a little bit to get, to put his socks and shoes on, some four or five minutes.

Q. Did you observe anything in the room other than the psychedelic paintings that was unusual?

A. There was a coffee table, or low table in the room, and laying beside this table was a large paper sack with the top rolled down, and from that point the glue smell was even stronger.

Q. About how long did it take him to get dressed and get ready to go?

A. Well, there was a little conversation at that point. His mother wanted to see the warrant, or this lady, I say she was his mother, this lady there in the house, and I told her I didn't have the warrant in my hands, the warrant was in Laredo. She seemed to think I couldn't [427] arrest him without the paper in my hands, and I assured her I could arrest him, and shortly after that we left the house. He went with me.

Q. Where did you take him after you left the house?

A. We went straight to Commissioner Martin's office.

Mr. De Anda: Your Honor, the next question is—well, you are going to try to get the next question in evidence and I'm going to object to it as hearsay.

Mr. Pain: Yes, I will try.

Mr. De Anda: Well, go ahead and try it.

Mr. Pain: Okay, "What happened there?"

Mr. De Anda: Your Honor, the response to that question is a comment made by Commissioner Martin at the time which is rank hearsay, and is inadmissible, and I think Counsel will concede that it is hearsay, instead of saying what happened there, he answered something that the Commissioner Martin had said, and I think it is—

The Court: —(Looking at instrument) I think it is hearsay.

By Mr. Pain:

[428] Q. Did he conduct a hearing at that time?

A. Yes, he did. I believe that somewhere along about this time, I believe that his mother must have called, or this lady at the house must have called Marvin Foster, the boy's attorney.

Q. The boy's attorney?

A. Yes, I think when we got there, either just before or immediately after we got there, Mr. Foster

called to Mr. Martin that he couldn't be present, but that the boy wouldn't make any statement, or wouldn't even tell his name or anything, which the boy didn't. He wouldn't even give his name, wouldn't even say anything.

Q. Did Commissioner Martin conduct a hearing?

A. Yes.

Q. And found probable cause to bind the boy over?

A. He knew the boy personally; he identified the boy; he knew him.

Q. And how long did this conference with Commissioner Martin take?

A. Probably ten minutes, at the most.

Q. After you had the conference or hearing with Commissioner Martin, what did you do?

A. I took him to the Nueces County Jail.

Q. You say the Nueces County Jail?

[429] A. Yes.

Q. Was Agent May or Valverde present with you at the time you were with Commissioner Martin?

A. They were both present.

Q. Were either one of them present at the time you took the boy from Commissioner Martin's office to the Nueces County Jail?

A. They were. In fact, we were in their car, the Customs Agents' car. They both accompanied me to the jail, to the booking desk.

Q. What did you do after you took the boy to the booking desk at the Nueces County Jail?

A. There was a little conversation at the booking desk. He wouldn't give the officer on duty taking the information down, he wouldn't give him any in-

formation. He said his name was God Logue, wouldn't give his address, age, or anything. But the officer—

Mr. De Anda: —And to the remainder of that answer, he again goes into what the booking officers said, which is again hearsay. I don't object to what Logue said, I think that is probably admissible under the circumstances of this case, but what the booking officer said, that would [430] be irrelevant to any issue, well, it might not be irrelevant, but it would be hearsay.

The Court: Well—

Mr. Pain: —It is hearsay, and we will leave it out.

The Court: It is kinda hard to tell when you don't know what it is, but if you agree it is hearsay, I will accept that.

By Mr. Pain:

Q. Next question is—So someone there at the desk knew Reagan Logue?

A. Yes, he had been in jail before.

Q. What did you do then?

A. I believe I went back to my office and continued with attending Court, I believe.

Q. And you had nothing further to do with this particular lawsuit, or case, or Reagan Logue, for the remainder of that day, is that correct?

A. That is correct.

Q. Now what day was that, that this arrest happened?

A. This was on May the 22nd, 1968.



Q. Now the following day, did you take a trip anywhere?

A. Yes, on May 23rd, 1968, which was the following day, I left Corpus Christi about 9:30 A.M. to [431] transfer prisoners to, I believe I went to Galveston, and then came on in to the Houston Marshal's office in Houston, and didn't return to Corpus Christi until about 8:45 that afternoon.

Q. That was the night of the 23rd of May, 1968?

A. Yes, that's right.

Q. Did you have anything further to do with Reagan Logue for the remainder of that day?

A. Not a thing.

Q. Did you receive any information concerning Reagan Logue on the following day, that is, May the 24th, 1968?

A. Yes, sir.

Q. What was that information?

A. Well, about 8:30 on the 24th, I was informed by telephone, I received a call from Mr. Tom Lowrance, Chief Jailer, that Reagan Logue had tried to commit suicide by inflicting wounds on his left arm on the evening before this.

Q. You received a telephone call from Mr. Lowrance on the 24th that Reagan Logue had attempted to cut himself on the previous day, is that correct?

A. That is correct.

Q. What did you do then, if anything?

[432] Mr. Bowers: I think that is a colloquy between you and Mr. De Anda there, George. He says, "About 8:30 in the morning," and he said 8:30 on the previous page.

By Mr. Pain:

Q. What did you do after receiving that telephone call from Tom Lowrance?

A. Well, he told me where the boy was. He told me he was in the Memorial Hospital. He told me that he had, in fact, I couldn't get hold of the Marshal that afternoon, and he had contacted Howard Vaught, and Mr. Vaught had told him to get hold of Casey Slocomb, Chief Deputy in Houston, which I understand he did. He called him by telephone and he was instructed to put a guard on the prisoner in the hospital, and I would take care of it when I got back. I would take charge when I got back from Houston.

Q. This was about the message you received from Lowrance?

A. Yes, he informed me of all this.

Q. What did you do after that?

A. Well, after I talked to Tom Lowrance, I went to Memorial Hospital to check on Logue's condition.

Q. Did you notice anybody standing guard at the [433] time you went to the hospital at this time, standing guard over Reagan Logue?

A. Yes, we had, there was somebody standing guard, there was a Deputy Sheriff.

Q. Why was that?

A. Well, of course, Tom Lowrance had been instructed to put a guard on the man to begin with by Chief Deputy Slocomb, which is customary. We always have a guard when we have a man in the hospital, we have a guard over him twenty-four hours a day.

Q. Why is that?

A. To insure his safekeeping.

Q. Because he is a prisoner?

A. Yes, that's right.

Q. Because the security of the hospital may not be what the security of a jail is, is that one of the reasons?

A. Well, unless a hospital is specifically equipped to hold a prisoner, yes. Any place I put a prisoner in a hospital, they are definitely required to have a guard.

Q. Do you recall at the time you went to the hospital the first time to see Reagan Logue the identity of the person standing guard at that [434] time?

A. Off-hand, I don't recall.

Q. Do you recall if it was Frank Reyna?

A. I believe it was Frank Reyna.

Q. Do you know Frank Reyna?

A. Yes, he is a Latin boy that works at the jail, one of the jailers.

Q. This is your independent recollection and you could be wrong on that, is that correct?

A. Yes, I'm pretty sure it was Reyna who was there.

Q. All right, when you arrived at the hospital, did you inquire of anyone about anything?

A. Well, when I first arrived, I asked the nurse on the floor what room he was in, and she took me to the room where Logue was located.

Q. Did you inquire of anyone as to what doctor had the care of Logue?

A. I first asked the nurse what his condition was, and that I understood he had inflicted a wound on

his arm, and she told me I should contact Dr. White. He was the physician that treated him before, when he arrived in the emergency room, and she told me Dr. White had gone off duty early in the morning and that he was probably home sleeping. So I asked her if [435] she would contact him by phone, actually get him on the phone, and she said she would, and did.

Q. Was it your understanding at that time that Dr. White was the boy's doctor?

A. Yes, it was.

Q. All right, and then what did you do?

A. Well, I called Dr. White. He seemed to be a little bit irritated because I supposedly woke him up, I don't know whether he was asleep or not.

Q. Before you proceed any further, at the time you called Dr. White, had you seen Reagan Logue in the hospital?

A. Yes, sir, I didn't talk with him. He was laying on the mattress on the floor, but I did not go into his room, and I saw him laying there.

Q. What floor of the hospital was he on, do you recall?

A. I believe the seventh floor.

Q. And you went up there and you saw him before the time you called Dr. White?

A. Yes, I did.

Q. And did you not speak to Reagan Logue?

A. I don't recall that I said anything to him. I [436] believe he was just laying there. I don't know whether he was asleep or what, but he was laying on the mattress.

Q. But at that time you went and made a telephone call to Dr. White, is that correct?

A. That is correct. I didn't make the call, the nurse made the call, and I picked up the phone and started talking to him after she got him on the phone.

Q. When you called Dr. White, did you tell him who you were?

A. Yes, I told him who I was.

Q. What else did you tell him?

A. Well, I asked him his condition, and he told me he had turned the case over to Dr. Gwin, a psychiatrist that I believe his family had contacted. I talked to Dr. White, and told him what my purpose of calling was, to find out why he was still in the hospital, and, of course, at this time he told me, well, he turned the case over to Dr. Gwin, the family had requested Dr. Gwin come in and take charge of the case. And I asked him if his injury, or his wound to his arm was sufficient to keep him in the hospital, if the wound was severe enough to keep [437] him in the hospital, and he informed me it was not. "I have nothing to do," he said, "with the case now, because Dr. Gwin is in charge of the boy now." Well, I think I may have asked him the second time if the wound was sufficient to keep him in, that was the main purpose, to find out about the injury to his arm, and he said it was not sufficient to keep him in the hospital, as far as the wound itself.

Q. Do you recall Dr. White telling you the boy should not be removed from the hospital?

A. I don't remember him saying anything like that. I do remember him saying about the boy's

mental condition, but other than that, him saying that he had a mental problem and that he had turned the case over to Dr. Gwin at the request of his family.

Q. Was that the sum and substance of your conversation?

A. Yes, I didn't talk to him but a short time.

Q. At that point, what was your understanding as to the boy's doctor?

A. That Dr. Gwin was his doctor.

Q. And that was as a result of what Dr. White told you?

[438] A. Yes, I asked the nurse how to get ahold of Dr. Gwin, and she said, "If you will wait, he will be making his rounds in a few minutes."

Q. Did you ask the nurse if Dr. Gwin was the boy's doctor?

A. I believe I did.

Q. Do you recall what her answer was?

A. Yes, she said Dr. Gwin had been to see him and he would be back making his rounds in a very few minutes.

Q. Did you see Dr. Gwin that morning?

A. Yes, I waited and just a short time, I'd say no more than maybe fifteen minutes.

Q. Did you talk to Dr. Gwin?

A. I certainly did.

Q. About Reagan Logue?

A. I did.

Q. Did Dr. Gwin acknowledge Reagan Logue was his patient?

A. Yes, he did. He told me the family had contacted him, and he may have told me he had talked

to Mr. Foster, I'm not sure. But somewhere in there, there was a conversation, I think he mentioned that Mr. Foster was his attorney, had contacted him, or his family had contacted Mr. [439] Foster.

Q. In this personal conversation and conference that you had with Dr. Gwin, where was that, was that in a private room in the hospital?

A. Yes, it was in a small room with a table, kinda of a long table, and Dr. Gwin was in a wheelchair. He had had some injury, he was in a wheelchair. Of course, at that time I didn't know whether he was in a wheelchair at all times or not, because that was the first time I had ever seen him, and I think the last time I ever saw him.

Q. Was anybody else present at this time?

A. Yes, a friend of mine, Mr. Phil Clayton, who at that time I had spent the night with him the night before; he come with me to the hospital.

Q. Where does Mr. Clayton live?

A. He lives in Corpus Christi.

Q. Why did he accompany you on this particular mission?

A. Well, I believe that morning that he and I had had coffee together, and I believe he possibly came to the office with me, and when I went to the hospital, I asked him to ride along with me.

Q. Just a friendly association?

[440] A. Yes.

Q. He had nothing to do with the government?

A. That is correct.

Q. About how long did you have this conference with Dr. Gwin?

A. Oh, I imagine we talked for fifteen or twenty minutes.

Q. And were you talking about Reagan Logue all of that time?

A. Yes.

Q. Was the tenor of your conversation with Dr. Gwin friendly or unfriendly?

A. It was very friendly. He was very nice, he was very cooperative and nice.

Q. To the best of your recollection, there was no disagreement between you two?

A. None whatsoever at all. I think I would have recalled if there had been. I would say it was just the other way, he was very nice and very friendly.

Q. What was it he told you about the boy during this conference?

A. Well, he mentioned something about, I believe the boy's mother, that he had treated the boy's mother, that he had treated the boy's mother, possibly, his true mother, his real [441] mother, and that he had also treated this boy and he knew the history of the family. He knew that the boy was a user of drugs, he said something about marijuana, peyote, LSD, and I think he even acknowledged he knew the boy sniffed glue.

Mr. De Anda: Ask one more.

By Mr. Pain:

Q. Do you recall if anything was mentioned during this conference about the boy's release from the hospital?



A. He said he thought the boy should be, under the circumstances of him being in charge, he should be committed to an institution for rehabilitation.

Q. Did the doctor bring this up at that time?

A. Yes, sir.

Q. Did you say anything in reply to that?

A. I think he asked me the question if, I think, "Don't you have institutions for this purpose?" And I assured him we did have, but it would take a Court Order, and, I believe at this time he said that he would be glad to call the Judge and talk to him. I told him, well, if the boy had an attorney that I thought it would be the best thing for the attorney to contact the [442] U. S. Attorney in Laredo to obtain a Court Order.

Q. Is there anything else that was mentioned during that conference with Dr. Gwin that you can recall right now that you have not mentioned?

A. No, I don't know, or I don't recall anything. We talked quite abit about the boy and about what should be done to him.

Q. After this conference with Dr. Gwin, what did you do?

A. Well, I went back to the Marshal's office in Corpus and called my supervisor, Gerald Jones, in Laredo.

Q. Why did you call him?

A. Well, I wanted to report to him the attempt of the boy to commit suicide, and tell him what I had done, and also to get his advice about getting this boy committed to an institution.

Q. So the purpose of the call was to report the circumstances that had occurred, and to receive possible further instructions, is that right?

A. Yes, I believe about this time Mr. Foster came in the office that day. I was talking to Jerry, and I think that he and I had a conversation about this boy's condition, and what should be [443] done to him, and I believe at that time Mr. Foster talked to Jerry, and I believe that Jerry told him at that time he would talk to the Assistant United States Attorney, Mr. Blask, I believe at that time was in Laredo.

Q. Did you mention anything about guards, the requirements of guards to Deputy Jones?

A. Yes, I did. I think there was something said about having guards at the hospital. Actually in this psycho-ward the doors were locked while I was at the hospital. I went to Logue's room the second time with Dr. Gwin, and during this visit with Dr. Gwin, we went to his room, and I noticed there was not much control of the keys. In other words, somebody would come in and unlock the door and go in the room and leave the door unlocked, and at this point I thought it was very necessary to have a guard there to enforce his safekeeping.

Q. Did you mention something to that effect to Deputy Jones?

A. I did, I mentioned it to Jones that I thought there was loose key control, and I believe that was the words I used to him.

Q. Did you make any recommendations and did he make [444] any suggestions to you?

A. I made recommendations that we keep a guard, and he said, "Well, by all means," to keep a guard there if I thought it was necessary to keep a guard there.

Q. When you say, "Keep a guard there", does that necessarily mean a Deputy United States Marshal?

A. No, we hire normally off-duty police officers in transporting prisoners, or keeping prisoners in the hospital, and it is usually someone we know personally in handling prisoners, knows our rules and regulations of security of prisoners, which is normally an officer off-duty.

Q. It doesn't necessarily have to be a U. S. Deputy Marshal to do this guarding?

A. No, we have the authority to hire guards for the purpose of guarding prisoners.

Q. Some type of peace officer?

A. Normally an off-duty police officer.

Q. Did you, after talking with Deputy Jones, call Deputy Slocomb?

A. Yes, I did.

Q. What did he tell him, excuse me, what did you tell him?

A. I think I reported to him the circumstances of [445] what we had done, and what the doctor had recommended.

Q. Did Deputy Slocomb give you any directions or information, or did he merely acknowledge receipt of your information?

A. Well, the best that I recall, he just acknowledged, told me to keep in contact with Jerry about what was going on.

Q. Was there any discussion either between you and Deputy Jones, or between you and Deputy Slocomb, about making some arrangements at the County Jail?

A. Yes, there was.

Q. What were those discussions?

A. Well, I think when I talked to Slocomb, it was mentioned that I should, if we could obtain a safe place to keep Logue, we should return him to jail. I don't remember exactly at what point.

Q. Did you subsequently receive instructions concerning the conditions of the Nueces County Jail as far as receiving this prisoner?

A. Yes, at this point I recall that my phone in the Marshal's office was inoperative, something was wrong with it, I had trouble because I [446] believe I received a call from the Marshal's office in Laredo through the United States Clerk's Office, and I believe they called me at the phone, and he said he had been trying to get me. And I think at that point I found out that my phone was not performing, and I told him my phone was out, and he said he would call the jail himself from Laredo and talk direct to Corpus Christi.

Q. Who was this call from, from Laredo?

A. Jones.

Q. What purpose was there in calling the jail in Corpus?

A. To make arrangements to keep Logue. It was my understanding from the conversation with him later, that he did call, in fact, Tom Lowrance, the Chief Jailer, and talk to him about fixing a cell and a safe place to keep Logue. In fact, he told me he had talked to him and they were preparing a place.

Q. Why was it necessary to especially prepare a cell for safekeeping of a prisoner like Logue?

A. Well, I believe Dr. Gwin, he said that if we were going to bring the boy back to jail, we should

have a safe place to keep him because of [447] the attempt of his taking his life.

Q. I think we have covered this before, but why was the boy taken from the jail to the hospital in the first place?

A. Because he attempted to commit suicide and injured his arm.

Q. By what means?

A. I believe he used a razor blade, if I'm not mistaken. I don't recall if I actually knew what he used, I think it was a razor blade.

Q. He tried to cut his arm?

A. He did cut his arm, pretty severely.

Q. And because of that he was taken from the Nueces Jail to the hospital in Corpus Christi?

A. That's right.

Q. After Deputy Jones indicated to you that arrangements would be made at the jail for safekeeping, did you do anything then?

A. Yes, I went to the jail. In fact, he instructed me to go to the jail and make an inspection of the cell.

Q. Of the cell Logue was to be put in?

A. Yes.

Q. Did you make that inspection?

A. I did make that inspection.

[448] Q. What did you look for?

A. Well, for any sharp instruments, anything that he could injure himself with, cut himself with. We, normally, in a cell like that, we strip everything out of it, any cups, or spoons, or sheets, or blankets, and just have the mattress is all.

Q. Did you do that in this instance?

A. Yes.

Q. Were there any sheets, blankets, spoons, or cups that you had to take out of this cell?

A. No, they had already taken everything out.

Q. The Sheriff's Deputy had already taken care of the cell?

A. Yes, the jail personnel.

Q. And you went over there and you inspected it, and what was in the cell?

A. Just a bunk with a mattress, and, I believe, just a commode, just a jail type commode, it doesn't have a lid or anything on it, and I believe a wash basin, the best I recall.

Q. There was no pad on the bunk, just a mattress?

A. Just a mattress.

Q. And what else in the cell?

A. Yes.

[449] Mr. Pain: Excuse me, I read the question wrong—

By Mr. Pain:

Q. And that was in the cell?

A. Yes.

Q. No other loose objects?

A. No.

Q. Were there any light fixtures attached to a hanging cord from the ceiling?

A. No, not that I recall.

Q. What did you do after inspecting the cell that you anticipated Reagan Logue would be transferred to?

A. To the best of my recollection, I went back to the office and called Dr. Gwin.

Q. All right, what did you tell him, or ask him?

A. I told him we had made arrangements to keep Logue in the Nueces County Jail. They had prepared a cell, and that I had inspected it, and it was my judgment that it was a safe place to keep him.

Q. What did he say then?

A. He said that under these conditions he would release him, and I asked him if he would call the nurse on duty and so inform her, and he [450] said he would.

Q. Did you tell the doctor that you had inspected the cell?

A. Yes, I did. I told him at the same time that a Court Order was forthcoming, I had already been instructed by the Marshal in Laredo, my supervisor, that Judge Connally said he would issue such a Court Order to have him removed as soon as possible to an institution, and I had been informed by my superiors that they would remove him to an institution as soon as possible. And he said under these conditions, I will release him to you.

Q. And he did release him?

A. Yes, sir, I went to the hospital about 3:15 that afternoon, and I checked with the nurse in charge on this floor, and she told me Dr. Gwin had called her and told her to release Logue to me. And shortly after that, I took him in my car back to the jail, and I again inspected the cell. Prior to putting him in the cell, I walked to the cell and checked it again, and they put him in the cell and locked him up, and I left. And I didn't have any further contact

with him at all after that. [451] I went back to, that afternoon—I don't remember exactly what time it was, but it was, I'm sure, after 4:30, and I went back to my duty station in Edinburg, or I left Corpus Christi in route to Edinburg.

Q. Now this day you talked with the doctor, and inspected the jail, and talked with Dr. Gwin about the boy's release, and assured the doctor that there was a safe place to keep the boy, and also when you took the boy from the hospital to the jail upon the doctor's release, this was all on May 24th, 1968, is that correct?

A. That is correct.

Q. Did you ever see Dr. White?

A. No, sir, I did not.

Q. The only contact you had with him was by telephone?

A. Yes, that is right.

Q. About how long was that telephone conversation?

A. Well, the best I recall, it probably didn't last over two or three minutes at the most.

Q. And either during, or immediately after this telephone conversation with Dr. White, did you have the understanding that Dr. White was Reagan Logue's doctor?

[452] A. It was my understanding that Dr. White was the physician on duty in the emergency room when he was brought into the room for hospital treatment. I assumed he was still his doctor, if he treated him, until I was told by Dr. White, or possibly one of the nurses.

Q. I think you testified that Dr. White's conversa-



tion with you was to the effect that Dr. Gwin was the boy's doctor, and my question was, either during or right after this conversation over the telephone that you had with Dr. White, what understanding did you have as to the boy's doctor?

A. Dr. Gwin was his doctor.

Q. And as far as anything to be done to the boy, or with the boy, was it your understanding that you would have to go through Dr. Gwin?

A. That is absolutely right.

(Discussion held off of the record.)

Mr. De Anda: Your Honor, this is cross examination.

The Court: All right.

[453] CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. Bowers, you have mentioned a conversation with Dr. Gwin pertaining to the boy when you returned to the room in which the boy was confined in the hospital. Did you have occasion to see the room and examine it?

A. I stood in the door, just glanced in the room, I never did actually go in the room where the boy was. I just stood in the door and looked around.

Q. Well, was it a regular type hospital room, or did it have any kind of additional security measures, like you see in the cell, was it more like a cell than a hospital room?

A. Well, I would say that it looked like a normal hospital room except it had a locked door, and they had taken all of the furniture out of the room, and there wasn't nothin' in the room except the mattress. I don't recall what the window had, whether it was barred or not, I don't recall, but I do know the room was stripped of furniture.

Q. You do know the Memorial Hospital is where they [454] keep the psychiatric cases?

A. I didn't know it until I went up there, and that was my first and last time I had been up there.

Q. And I believe you said earlier you were somewhat concerned about the boy, about being sure the boy had a guard at the hospital at all times for his own safety, as well as the safety of others?

A. My concern was for the security of the prisoner, that he did not escape. As far as his safety in the room, the guard did not stay in the room with him, the guard stayed out the door. He was posted outside the door. As far as his safety in this particular room, why, I don't think the guard actually had any function there because they were going in and out of his room all the time.

Q. The guard could hear anything that went on in the room?

A. I believe he could hear anything that went on in the room.

Q. Now in your conversation with Dr. White, you emphasized, I believe, his condition, the boy's condition with reference to his arm and the wound that he had inflicted on his arm?

[455] A. Yes.

Q. And what your conversation with Dr. White was

relating to, at least your questions related to the boy's physical condition?

A. Yes.

Q. As distinguished from the boy's mental condition?

A. Yes.

Q. What is the reason that you distinguished between the two conditions? What difference did it make to you why he was in the hospital, hospitalized?

A. Well, it was, I was very concerned why he was there. He was a prisoner in my custody, and if he had inflicted wounds on his arm, I wanted to know the condition of them.

Q. How about his mental condition, were you also interested in that?

A. Certainly.

Q. Would it have made any difference to you if he was confined to the hospital because of his mental condition, or confined in the hospital because of his physical condition, insofar as keeping him in the hospital was concerned?

A. Well, I don't know just exactly how to answer your question. At this point, of course, when [456] I went to the hospital, I thought he was confined to the hospital because of the injury to his arm. I, at this point, I didn't know anything about his condition other than the injury to his arm.

Q. Well, you, somewhere along the way there, in your conversations with Dr. Gwin or Dr. White, or both, you became aware of his mental condition?

A. Oh, yes, certainly.

Q. And you were concerned about it?

A. Yes.

Q. Is that right?

A. Oh, yes, certainly.

Q. Did it make any difference to you whether he was in the hospital because of his mental condition, or because of his arm, insofar as your decision to let him remain in the hospital?

A. Well, it wasn't my decision to make, to leave him in the hospital. My superiors made that decision. I did not make that decision.

Q. So far as you would—excuse me, let me start over—so far as you know, would that fact enter into your superior's making that decision, whether or not he was in there for a physical condition or whether he was in there [457] for a mental condition?

A. It was the policy to keep a person in the jail, or the place we have a contract to detain our prisoners, and not to keep them in the hospital unless it is absolutely necessary, unless the doctor orders him kept in the hospital. Certainly, if the man cuts himself, he would have to go to the hospital for treatment, but immediately upon release from the hospital, or from the doctor, we normally take him back to the jail. And I think even with a mental condition, if you have a safe place to keep them in, if the doctor says it is okay to return the man back to the jail, I would treat the physical condition the same as I would a mental condition, if the doctor released him back, to go back to jail, I would return him back to jail, of course.

Q. Were you under the impression at that time that if a man had a mental condition, whether it was

one that required hospitalization or not, but didn't have a physical condition that required hospitalization, that you had to take him back to jail?

A. Would you state that question again?

[458] Q. All right, were you under the impression at that time, either because of what your superiors told you, or because of your own interpretation of your rules and regulations, that you were under the impression at that time that if a man was only suffering from a mental condition, as distinguished from a physical condition, that you would have to take him back to jail regardless of whether or not he ought to be in the hospital?

A. No, I think I still say it would be up to the doctor, what the doctor would say.

Q. All right, in other words, if the doctor said there is nothing physically wrong with this man, his arm doesn't require any kind of hospitalization, but he is mentally disturbed, and because he is mentally disturbed he ought to be in the hospital, if the doctor had told you that, then you would make no effort to take him out of the hospital?

A. Mr. De Anda, I couldn't take him out unless the doctor released him. I certainly wouldn't take a man from the hospital and take him back to jail unless the doctor released him. I say this, if it's, whether it's physically or [459] otherwise, if he released him to take him back to jail, certainly, I would take him back to jail.

Q. Did you have any problems with Dr. White or Dr. Gwin about taking this man out of the hospital?

A. I had no problem with Dr. White. I only talked with him a very short time. I had no problem with Dr. Gwin at all.

Q. You didn't have to convince Dr. Gwin that you had to take the man back to jail?

A. No.

Q. Why is it that you were taking all these precautions and calling back to Dr. Gwin after you had been instructed to take the man back to jail?

A. I had been instructed by my superiors not to take him out of the hospital unless I had a release from Dr. Gwin, very specific instructions, that is why I called him back.

Q. Well, when was it Dr. Gwin finally released the man to go back to jail, as best you recall, if he did release him to go back to jail?

A. He did release him.

Q. All right, that is your version of it. Now if [460] Dr. Gwin said the only reason he released him was because he felt he had no choice, because of his conversations with you or some other member of the Marshal's office, would you agree with that statement?

A. No, sir.

Q. All right.

A. I certainly wouldn't, and I don't think Dr. Gwin said that. He didn't say that to me.

Q. Now—

A. —And the point of Dr. Gwin releasing the man, there is no doubt he released him. I talked to him personally and he said if we had a safe place to keep him, he would release the man.

Q. Now you say you had a conversation in Mr. Foster's presence with Mr. Jones, a phone conversation?

A. I don't recall whether I had it when Mr. Foster came in the office—I believe that—I don't know whether I was talking to him, talking to Jones when he came in the office, or whether I called him after he came in. It is possible I may have talked to him and called him back when Mr. Foster came in.

Q. Do you recall in that conversation mentioning [461] you hadn't been home for a couple of week-ends, but you would be willing to stay in Corpus Christi and guard Mr. Logue?

A. I don't know how long I had not been home. That is too long to remember. On several occasions I would be gone from home two or three weeks at a time. Whether I made the comment I would stay there and guard him, it is possible I made that remark, I don't recall that I did.

Q. All right.

A. It is for sure that if I couldn't have obtained a guard, I would have been there guarding him.

Q. Well—

A. —It would have been my duty to.

Q. And were you trying to convince Mr. Jones to permit you to stay there and guard Mr. Logue, or to keep him in the hospital?

A. Mr. De Anda, I don't recall. I know I was concerned about the young man.

Q. All right.

A. I can't—certainly, I have to be frank with you, I was definitely concerned about him. Whether I made the remark I would stay there, I don't recall.

Q. Did you tell Mr. Jones that the doctors had [462] stated the boy ought to remain in the hospital?



A. I don't recall making that statement. I know that the doctor did say that he should stay there if we didn't have a safe place to keep him.

Q. Did you, did the doctor tell you he should stay there unless he was transferred to another medical facility? Do you recall him telling you that?

A. No, I remember him saying he should be transferred to a mental institution for observation as soon as possible.

Q. All right, didn't the doctor tell you that he ought to be transferred from the hospital to some other mental institution or medical facility, do you recall that, Mr. Bowers?

A. I believe that particular statement was made before we discussed about a safe place to keep him.

Q. In other words, the doctor did not recommend that you take him to any place other than a medical facility—

A. —Unless we had a safe place to keep him.

Q. Did he specify, did the doctor specify what he meant by a safe place to keep him?

[463] A. I don't recall him actually laying down the ABC rules, or anything; he just took, I took it he meant a place without instruments that he could inflict wounds on himself, or harm himself, that is what I—

Q. —Did you also take it to mean he ought to be under any sort of observation?

A. I don't recall him saying anything about he should be kept under observation. I think as a practical matter, that a person under those conditions should be kept under observation. I don't recall him specifically saying that.



Q. In other words, you believe he should have been kept under observation while in jail, under the conditions?

A. Yes, I think he should have. In fact, I think that was, we understood that he would be under observation.

Q. Now there were some discussions at the jail that this would be one of the conditions that would make the cell safe, would that—strike that and let me start again— Now, there was some discussion at the jail that this would be one of the conditions that would make the cell safe, would be that he would be kept under constant [464] observation?

A. I don't know whether the word "constant" was used, but that someone would be watching him, or he would be under observation. Whether it would be constant observation, I don't recall that ever being used.

Q. May not have used the words, but somebody ought to be watching him while he was there?

A. Yes.

Q. Was this suggestion made to you, Mr. Bowers?

A. The best I recall, I believe that when Deputy Jones talked to Tom Lowrance, there was some mention of putting him in a cell where he could be observed, or possibly put him with a trustee in a cell next to him where they could watch him, and that was my understanding of what would be done.

Q. Of course, you were aware he had this bandage, this hand and arm wrapped in this bandage?

A. Yes.

Q. And you were aware of the kind of bandage it was?

A. No, I wasn't aware of what kind of bandage it was. I didn't know whether it was just a—I have thought quite often since then, trying [465] to recall what kind of bandage he had on his arm, and I honestly couldn't tell you whether it was a wrap-around or whether it was a, what do you call it, a bandage they make up—

Q. —Gauze pad?

A. Right, with tape on it.

Q. You know now that it was a long bandage?

A. I don't know, but I heard he had a bandage that was strong enough to hold his weight.

Q. All right.

A. May I say something off of the record?

Mr. De Anda: Well, we decided for you not to say anything off of the record. And the next question is—

By Mr. Anda:

Q. As far as you know, was anybody in the Marshal's Office, either you or anyone else, under the impression that you had no funds or authority provided to keep a man in the hospital for a mental condition that was under your care and charge?

A. Well, it has been my understanding that as a practical matter, that if you have got a man in the hospital, as soon as you obtain a release from the doctor, you should put him back in the [466] jail because keeping him in the hospital is a tremendous cost to the taxpayers.

Q. You didn't answer my question, but maybe—so far as you know, were either you or anybody else in the Marshal's Office connected with this transaction,

under the impression that you could not keep a man in a hospital, like Memorial Hospital, strictly for a mental condition?

A. I'm going to answer your question exactly like I did before, that it was my understanding, my only understanding would be that you would not keep a man in a hospital for any reason if you could keep him in the jail; if you could return him to the jail since the doctor released him. I know nothing about the difference between a physical and a mental condition, or about what funds are available or anything, except that trying to get the man to stop the expenses as soon as practical, and as soon as the doctor releases him.

Q. As I understand you, and tell me if I understand you right, you see no difference of anyone that is indicated otherwise, but whether a man is in the hospital, if he be in the hospital for [467] a mental condition or for a physical condition, he could come out of the hospital if the doctor said it was proper for him to do so?

A. That is right.

Q. And if the doctor said it was not proper for him to be out of the hospital, that he should stay in the hospital even though he might not have anything physically wrong with him, it might be a mental situation—

A. —That is true, the doctor, what he would say would be the determining factor as far as I am concerned, and has always been the determining factor when I put a man in the hospital or take him out.

Q. Well, when was it that the doctor finally told

you that it was all right to release him from the hospital?

A. When I called him and told him we had a safe place to keep the man.

Q. From the jail, you called him from the jail?

A. No, I think I called him from the office.

Q. All right, you say that every time you observed him laying in the hospital, he was lying on this mattress?

A. Mr. De Anda, the only time I actually recall [468] seeing the boy was when I first went to the hospital that morning.

Q. All right.

A. And looking in the door, and he was laying on this mattress. Whether he was asleep or what, I, I don't remember having any conversation with him whatsoever.

Q. Anyway, he was laying on the mattress whether he was awake or asleep?

A. Then when the doctor, Mr. Gwin, went upstairs to look at the boy, I recall I went back with him, and I think I stood at the door. I don't, I can't recall whether he had any conversation with him or not.

Q. Where was the boy then?

A. Well, the best I recall, he was still laying on the mattress.

Q. All right, now when you went in to get him to take him to jail, did you do that by yourself, or did someone go with you?

A. Well, I actually took him myself, but there was a Deputy on duty there guarding at the time, I don't recall his name.

Q. It would be someone from the Sheriff's Office?

A. Yes, it was one of the Deputy Sheriffs from the [469] Sheriff's Office.

Q. Now when you went in to get him, was he still laying on the mattress?

A. I don't recall whether he was laying on the mattress at that time or not. He was in the room, I know that, but I don't recall.

Q. Did you have to assist him in any way to take him to jail?

A. No, other than just—you mean carry him or anything like that?

Q. Carry.

A. No, I didn't have to carry him. I believe that he was possibly kinda wobbly on his feet, or something, but I didn't have to carry him. He went under his own power.

Q. If I remember, the doctor said something about him being under heavy sedation—

A. —It's possible he could have been.

Q. Did you have to assist him, not in a sense you had to carry him, but in a sense you had to help him along? I don't mean you were fighting, you say he was wobbly, was he wobbly enough to where you had to hold him up?

A. I didn't have to hold him up. I may have had to lead him, maybe put my arm under his arm, but [470] I know he went under his own power. The best I recall, he was a little wobbly, and possibly might have been under sedation, I don't know. He did walk by himself, I know.

Q. Did you have any conversations with his mother there at the hospital?

A. Yes, I believe that there was a lady, this was a different lady than was at the house when I arrested him, and it was my understanding this was his real mother. She was concerned about his clothes, I believe, and I told her, because when I took him from the hospital, I took him with his pajamas. He had on, I believe, a short-sleeved shirt and short pants, and she was concerned about his clothes. And I told her just to keep his clothes and she could bring them to the jail. I believe she wanted to ride with him and I told her she couldn't. We didn't have very much of a conversation. I think the best I recall she was concerned about his clothes. In fact, I think she had took his clothes home to wash them for him, and she had brought them back to him and wanted to know what to do with them.

Q. Do you recall telling Mr. Foster that you had [471] been advised by Dr. Gwin when you were there in your office in this telephone conversation, and you saw Mr. Foster walk in, do you recall telling Mr. Foster that Dr. Gwin had told you that under no circumstances should the young man be returned to the County Jail, but that he should be retained in the hospital under the doctor's care?

A. I don't recall making that statement. I may have said the doctor didn't want him taken out of the hospital unless we had a safe place to keep him. Dr. Gwin was very concerned about him, there is no doubt about it.

Q. I know this happened some time back, Mr. Bowers, and I'm not trying to badger you or anything.

A. I don't recall that specific conversation.

Q. But you do know, and you do remember that

Dr. Gwin was quite concerned about the young man going anywhere other than to another hospital?

A. Yes, he was. In fact, I think Mr. Foster—in fact, the fact is I think Mr. Foster, we all were.

Q. I see, and you were concerned enough about it to where you went to the jail and made a visual inspection of the cell itself?

[472] A. Yes, I sure did.

Q. And in fact, you really, did you make two inspections?

A. Yes, I made one just after I took him upstairs, and while we were holding him kind of in the run-around, I went back and checked the cell again because, the best I recall, the door had been left open.

Q. And the reason was Dr. Gwin had expressed all his concerns to you, and also because you knew the boy had already tried to kill himself, so you knew he was serious about suicide?

A. There was no doubt in my mind he was.

Q. Yes, and it was your understanding when you left him there in the County Jail, that he would be kept under a sort of surveillance or observation while he was there?

A. That was my understanding, yes.

Q. And that, plus the fact that he was in this cell where there appeared to be nothing with which he could injure himself, is what made you tell the doctor that you had a safe place for him?

A. I told him I thought, in my judgment, we had a safe place to keep him.

[473] Q. That was because of these facts we have talked about?

A. Yes.



Q. And had the cell contained foreign objects and things, or had he not been under observation or surveillance, then you would not have considered it as a safe place?

A. That is correct.

Q. And you would not have made that statement to Dr. Gwin?

A. I certainly wouldn't.

Q. Who was it that instructed you to return the prisoner to the jail, Mr. Bowers?

A. Well, I don't recall of anybody instructing me to take him back, other than my instructions were to go make an inspection of the jail to see if the cell was safe. I had been told that by my supervisor, that he had contacted the jailer and that a safe place would be prepared and they would watch him and take care of him.

Q. That was Mr. Jones?

A. Yes.

Q. Mr. Slocumb is a Chief Deputy?

A. Yes.

Q. And what would Mr. Jones be?

[474] A. Supervisor.

Q. And you would be working under him?

A. Yes.

Q. And all your decisions you made, and all the things you did, and all of your actions pertaining to Mr. Logue and the removal of Logue from the hospital, and his confinement in jail, all these things that we have talked about, you did as a U. S. Marshal, a Deputy Marshal?

A. Yes.



Q. And it was in the scope of your authority and your employment?

A. Yes, sir.

Q. When you first arrested Logue at his home, you say he had to dress; how was he dressed when you first saw him?

A. He just had on a pair of levis

Q. No shirt?

A. No shirt.

Q. No undershirt?

A. No undershirt, no shoes or socks.

Q. You mentioned something about a brown paper sack in the room, did you look at it, or look in it?

A. I think I picked it up and smelled of it. It [475] was empty. It was just a large paper sack, about a medium shopping bag size, with the edges turned down about a third of the way down. There wasn't anything in it, just smelled real strong of glue.

Q. Would you say the whole house smelled strongly of glue?

A. Yes, immediately on coming in the front door in the hallway, you could smell the smell, and as I got to the room, it was a little stronger.

Q. You didn't have any conversation with him or with his mother or anyone there in the house about the glue smell?

A. No, I certainly didn't.

Q. All right.

A. I just observed this, and the fact, I think I mentioned it to the Customs Agents while we were there, made some remark about it.

Q. You say that whenever you got to the jail, that Logue identified himself as God Logue?

A. Right, (spelling) G-O-D is what he said.

Q. Is that how he spelled it?

A. Yes, he spelled it out.

Q. Then I believe you said something about—

Mr. De Anda: —Time out, let me see here [476] what I asked, Judge, if I might. That's going into the matter that the Court excluded, and I'm going to skip this question.

Mr. Pain: Your Honor, it's his own question.

Mr. De Anda: Well, I don't care whose question it is.

Mr. Pain: I think he should be allowed to read his own questions that he asked.

Mr. De Anda: I will read my questions, the questions I would not object to the answers, Your Honor.

The Court: You said the Court excluded?

Mr. De Anda: Yes, sir, with reference to the voluntary, or comments, Judge, when he was first booked at the, this was a discovery, discovery deposition, and I don't think I am bound to read every bit of it. He can read it if he wants to, and if the Court rules it is admissible—

The Court: —I think you can get it that way, I just don't know—

Mr. De Anda: —Judge, let's go ahead and I will read it, that will save time.

[477] The Court: All right.

By Mr. De Anda:

Q. Then I believe you said something about the jailer there saying, well, he didn't have to get any information from him because he had the information?

A. He said he wouldn't give his address, his age, or anything, any normal thing that they ask a man, and he said, "Well, it's okay, we have got his report back; we have had him a couple of weeks ago."

Q. And was Logue's demeanor at the time that of a person mentally off, he wasn't just trying to be a smart guy?

A. No, Mr. De Anda, I would say he was pretty high.

Q. In other words, his reactions and his responses were not that of a wise guy?

A. No, it was—

Q. —But rather a man, or a person who did not have possession of his mental faculties for whatever reason there might have been?

A. Well, I don't know exactly how to answer your question. He was not in his normal state. He was under the influence of something.

Q. It was an abnormal reaction rather than a [478] resentful reaction to the questioning?

A. Well, I think he was resentful to the fact he was being arrested, and he didn't know why he was being arrested. This case, I understand, was a conspiracy case he was involved in, and the fact, I don't believe he was actually caught with this marijuana, and he possibly didn't understand the circumstances

of conspiracy charges, and I think that he was concerned with his case he had pending the next day before Judge Roberts, and that, and the fact he was being taken to jail. He was upset, but I wouldn't say he was belligerent, or trying to be smart or anything.

Q. Now at home when you arrested him, you did not know him?

A. No, I had never seen him before.

Q. Did you ask him who he was?

A. Yes, when he came to the front door I asked if he was Reagan Logue, yes.

Q. He did acknowledge that?

A. Yes, he did.

Q. All right, when you talked to Dr. Gwin the last time that you talked to him, before getting Logue out of jail, I believe you went into some [479] detail about describing to Dr. Gwin the surroundings and the situation that existed in the jail, and the conditions under which Logue would be confined?

A. No, sir, I don't remember going into detail with anything other than telling him I had inspected the cell, and I considered it a safe place to keep him.

Q. I believe you mentioned also the fact that he would be kept under surveillance, those were the things you talked to him about?

A. Yes.

Q. And it was after that, that Dr. Gwin told you, well, it would be all right to get him out of the hospital?

A. He said, "Under those circumstances, I will release him to you."

Q. All right, did you ever talk to Mr. Vaught, How-

ard Vaught, about this situation while Reagan was still in the hospital?

A. Mr. De Anda, I don't remember when I talked to Mr. Vaught. I do know I had a conversation with him concerning this boy. My understanding, I believe he had had the boy on a, maybe probation, or probation investigation, pre-sentence [480] investigation on the boy. I do recall having some conversation about the boy, and I remember at the time I was concerned about the boy. I recall my conversation with him concerned his call to Chief Deputy Slocomb and with Mr. Lowrance, the Chief Jailer, and possibly there was some other conversation concerning Mr. Logue about it, but I don't recall.

Q. Didn't Mr. Vaught suggest to you that Logue should not be returned to jail, but rather kept in the hospital?

A. I don't recall him making that statement. He possibly could have, but I don't recall it. I don't think that, well, not that I wouldn't have listened to Mr. Vaught's suggestion along that line, but I don't think he would have—what he would have said would have made any difference because it was up to the doctor. I won't say he didn't say it, but I don't recall him saying it.

Q. I understand you took your orders from Mr. Slocomb and from Mr. Jones, and if there was a conflict between their orders and Mr. Vaught's suggestions, or orders, or what you may want to call them, you would have listened to your [481] superiors, that was your obligation?

A. That is right.

Q. As a matter of fact, if your superiors told you to take Logue out of jail, regardless of what Dr. Gwin said, you would have taken him out of jail? I mean you would have taken him out of the hospital, excuse me?

A. No, I don't believe I would have.

Q. In other words—

A. —I don't think, to begin with, my superiors would have told me to take a man from a doctor's care without the doctor's okay. They would never have told me that. If they had, I think I would have—I don't think I would have taken him out under those circumstances because I was directly responsible for the man, or at least I felt I was. I was on the scene and was there, but they wouldn't have told me that.

Q. I'm not saying they did, I'm just saying if they had.

A. All right.

Q. Did you talk to anyone else other than Mr. Slocomb and Mr. Jones about this problem, about Logue and his confinement in the hospital, and his removal to the jail?

[482] A. I'm sure I had conversations with several people.

Q. I'm sorry, nobody else in the Marshal's Office?

A. Not that I recall.

Q. All right, now what conversations do you recall you had with Mr. Slocomb? How did he enter into any direct conversations with you?

A. After I reported all of this to my superior, Jones, in Laredo, he instructed me to report this to Chief Deputy Slocomb, which I did.

Q. Now by "this", what do you mean, what was it that he told you to report to Slocomb?

A. The fact that the boy had, well, he already knew the boy had attempted suicide, but he told me to call him and let him know what had happened, what the doctor said, and inform him about this, the efforts to obtain a Court Order to remove the boy to an institution. Mr. De Anda, before we can remove a prisoner at all under the set-up at that time, and I understand it is the same set-up, we have to go through what we call a Prisoners Coordinating outfit in Washington, which authorizes the movement of these prisoners in Washington. And I believe my conversation [483] with Mr. Slocomb was to report to him what we were trying to do, or what we were attempting to do, where he could let the people in Washington know that there was this pending Court Order, they could make arrangements for transportation for the man. Mr. Slocomb was to let them know what we were trying to do, get this man removed.

Q. That is, take him to the mental facility, to a medical facility?

A. Yes.

Q. It had nothing to do with his removal from the hospital to the jail?

A. I am sure it had something to do with that, too, the whole thing.

Q. You also talked with Mr. Slocomb about a determination as to whether or not he should be removed from the hospital to the jail?

A. No, I don't remember talking to him about whether he should be removed or not.

Q. Well, did you talk to Mr. Jones about removing him from the hospital to the jail?

A. I'm sure in our conversations we had quite a bit of discussions about it.

Q. In other words, your conversations pertaining to the decision to remove Reagan Logue from the [484] hospital and return him to jail, were with Gerald Jones?

A. No, with Dr. Gwin.

Q. All right, you had no conversations with Jones after that decision?

A. Oh, I'm certain that we talked about taking him back to jail.

Q. All right.

A. I don't think there is any doubt about that, but the decision of whether to remove him or not, I don't think that was our decision to make. It was, I think, Dr. Gwin's decision.

Q. So you didn't talk about that, or clear it with him, or anything, because that was strictly a decision between you and Dr. Gwin?

A. Well, my first conversation, and my, in my conversation with Dr. Gwin, we discussed the fact of getting this boy to an institution as soon as possible, and where we would keep him in the meantime.

Q. Yes, and—pardon me—

A. —And he said if we had a safe place to keep him in the jail, if there was a safe place there, he would release him if we were sure it was safe. And this information was conveyed to [485] Jones and to, I'm sure to Slocomb, both.

Q. What did Jones say about it?



A. Well—

Q. —If you recall.

A. Well, at this point I think it is about the time my phone went out, and he said, when I talked to him in the Clerk's Office, he said, "I'll take care of it." And in the meantime, I was getting the phone men to work on the phone, and somewhere, in a couple of hours, we had the phone working and we had the conversation. I believe that is when Mr. Foster was in there and it was still working.

Q. And these were conversations with Jones?

A. Yes, we talked, I'm sure, four or five times that day.

Q. Now your conversations with Slocomb did not pertain to this business about getting him out of the hospital and putting him in jail, but rather pertained to getting him transferred to a medical facility, a federal medical facility?

A. No, that is not correct. I think we probably talked about both things.

Q. All right.

A. Rather than just one.

[486] Q. Do you remember anything specific about your conversation with Mr. Slocomb pertaining to Reagan's removal from the hospital and return to jail?

A. Other than the fact he said to be sure you get a release from the doctor, be sure the doctor releases him to you before you take him back. In fact, the best of my recollection is, that was my instructions from both of my superiors.

Q. All right, then, let me get one other thing

straight, Mr. Bowers, as I understand it, no one instructed you to take Reagan Logue back to jail. This was done by you, strictly based on your negotiations and discussions with Dr. Gwin?

A. No, I couldn't say that.

Q. I thought that is what you said. How do you want to qualify that statement?

A. Well, I had no specific instructions from anybody about taking the boy back to jail, or leaving him in the hospital, or anything. As I stated before, the normal procedure is, when a person is committed, a prisoner is committed to the hospital, that you, as soon as it is practical, and as soon as the doctor will [487] release the man, is that you take him back to the institution that you take him out of, as a practical matter. And this is something we always do, and always is assumed, is understood, and as far as anybody making a decision to bring him back, I don't recall anybody making a decision saying, "Take this man back." But since the doctor released him, we would take him back, and I didn't say anybody gave specific orders to take him out of the hospital.

Q. Now in the usual case, does the doctor, or have someone call at the hospital, have someone call the Marshal's Office and say, "This man is going to be released," or make arrangements to pick him up, or how is that done?

A. It is handled all kinds of ways. It is owing to what hospital that you are connected with. I would say that if I was in my home station where I know the doctors, know them personally, and if I had a man in a hospital, he would probably tell me; if I didn't know the doctor, I probably would call him

and ask him when I could have this man and so forth.

Q. You stated that you would call the doctor and then the doctor might tell you, "Well, I will [488] advise you when he is ready to be released, or I will have your office notified," is that the usual way it is handled?

A. Well, I can't say that it would be, Mr. De Anda, because I say, again, it is whatever the arrangements are that you have, or possibly the understanding that you have with the different institutions or different hospitals, whether you would call the doctor or he would call you. I don't think that there is any policy as far as—

Q. —I just wondered. Now, let me ask you this question—you say first you called Dr. White and determined that his arm did not require, his arm wound did not require hospitalization at that time?

A. Yes.

Q. And then you called Dr. Gwin?

A. I didn't call Dr. Gwin; I waited until he made his rounds.

Q. You went to the hospital?

A. I was at the hospital at this time. I was on the floor at the nurse's station where Logue was located when I talked to Dr. White. All I had to do was sit down and wait until he got there.

[489] Q. Now your purpose in going to the hospital the first time was what?

A. To check on his condition, how he was. I mean, I had a prisoner that had been taken out of jail while I was gone, and he was committed to the hospital and had a guard on him.

Q. So after you talked to Dr. Gwin the first time and he told you that this man's mental condition was serious—

A. —That's right—

Q. —certainly at that time he didn't indicate to you that he was going to release the man?

A. Mr. De Anda, I don't know when the conversation took place pertaining to releasing the man. He was concerned about getting him committed to an institution for observation as soon as possible. There was quite a bit of mention about a Court Order, about his attorney, Mr. Foster, to contact the Assistant U. S. Attorney in Laredo, to obtain a Court Order from Judge Connally. It was possible there was a conversation about releasing him from the hospital and putting him back at that time, but I don't recall when we talked about it.

Q. When was the first time you recall it was [490] mentioned, that he be taken from the hospital and back to jail?

A. I don't recall when it was. It was either at this conversation, or I talked to him only on the phone once, or twice on the phone, but at sometime we did discuss it.

Q. And what did you say, well, Doctor, when you discussed it with him—"Doctor, I am ready to take this fellow back to jail, I will find a safe place for him"? Something of that nature, or, "I want you to release him"?

A. I don't recall how the conversation came about. I just remember generally the doctor was concerned about him, and concerned that he would be kept in

a safe place, and that he would be removed as soon as possible to an institution. But I don't remember exactly the—

Q. —Mr. Bowers, you have been referring to a statement—

A. —I think you have a copy of it—

Q. —and just so we will be sure, we will go ahead and attach this to your deposition.

A. You can attach a copy, but that is my personal copy.

Q. All right.

[491] A. That is all I have got on this case.

Q. You also brought some other papers with you.

A. That is my logs for that particular month. I will give you the logs that pertain to that day.

Q. Do the logs for that particular day, here are the logs for the three days involved, the 22nd, the 23rd, and 24th—

A. —Those logs represent expenses involved, and normally they are not in detail of all the things I do, but, for instance, on that log, I don't believe I showed I went to the jail and made that inspection, but I did. But I don't think I showed it on my log, the best I recall; it didn't involve any miles, or not very much.

Q. I want to be sure I understand everything on there. Let me ask you this—on the Daily Log for May the 24th, you make mention, there is a comment, "C-O-M-M", is that, "Committed Logue to Nueces County Jail, instructed jail personnel as to security for the above prisoner," and those were the instructions you have been talking about, the safe place to

keep him, and keep him under surveillance and observation while he was in jail?

[492] A. Yes.

Q. That is what you are making reference to on this Daily Log for May the 24th?

A. Yes, sir.

Q. All right, well, I will just—I don't know if they will be of any value to us, but I suppose we can have a copy of these attached to the deposition. Also, do you have any other written memoranda of any kind that pertain to this event?

A. No, I don't.

Q. All right, have you made any other statement, Mr. Bowers, written statement?

A. Yes, I made a statement sometime after this. I made a statement to the F.B.I. Agent Crossett at Laredo. I don't have a copy of that, and I couldn't tell you other than he asked me questions pertaining to this event.

Q. I see, but there was a written statement and you signed it?

A. I don't recall whether I signed a written statement or not, I just couldn't tell you.

Q. Did he reduce it to writing in your presence?

A. I don't think so, I don't recall.

Q. All right, Mr. Bowers, do you recall any [493] conversations at all pertaining to funds that might be available to keep Reagan Logue in the hospital, or the lack of funds for that purpose because of his mental condition?

A. No, I would have no knowledge of what funds were available. I may have said something about getting the man back in jail, as far as the cost is con-

cerned, but as far as funds are concerned, I would have no knowledge what funds would be available for anything, other than the fact—

Q. —But you don't remember getting into any conversation with them about it?

A. No, other than the fact as I stated before, that it would cost Forty-eight Dollars a day for a guard.

Q. I'm not talking about the economy aspect of it, were you worried about the economy?

A. The man's condition, his safety and treatment is the first concern. But at the point where he can be removed, and for all practical purposes, I think that he ought to be removed.

Q. I understand that, Mr. Bowers, but other than any conversation about the cost or economy, that was not mentioned?

[494] A. No.

Q. There is nothing that you can recall that transpired to the effect, "Look, we just don't have any allocation or any money to keep a man in jail because he is mentally ill," there was nothing like that?

A. I never said anything about not having any money because I would have no knowledge of that.

Q. I'm saying, there was no conversation about that fact?

A. No.

Mr. Pain: Your Honor, there is about three, three or four questions on Redirect Examination, it continues—

The Court: Let's go ahead and finish it.

## [495] REDIRECT EXAMINATION

By Mr. Pain:

Q. When you took Reagan Logue from the hospital to the jail, how was he dressed?

A. From the hospital to the jail? He had on a pair of shorty pajamas and a sport shirt that goes with it, short-sleeved.

Q. And that is all he had on?

A. Yes.

Q. And that was the amount of clothes that he had on at the time he was put into the jail, is that correct?

A. Yes.

Q. Now this report that you have periodically referred to in refreshing your recollection, it does not necessarily contain all of what you have testified, does it.

A. No, it does not. This is just a report that I made to the Marshal concerning this incident.

Q. This report, in the way you have used it today, is merely to refresh your recollection of the times and so forth, is that correct?

A. That's right, as far as certain times of the day, I didn't recall. I knew it was in the [496] morning, but I didn't recall exactly what time until I looked at the report.

Q. And your independent recollection will supplement whatever is in the report?

A. Yes.

Mr. De Anda: And then there's a little more re-cross—



## RECROSS EXAMINATION

By Mr. De Anda:

Q. One other question, do you recall when you made this written statement that we have been referring to, this report we have been referring to, Mr. Bowers?

A. Do I recall what date?

Q. Yes, sir.

A. No, but it was just shortly after this happened, very shortly after, because I would have it, and it is a requirement of the Marshal's Office when anything like that happens, you make a report immediately after.

Q. This was made several days after, or was it?

A. I would say probably within a week or ten days after it happened.

[497] Q. I noticed that on here, the last statement on the report is, that you made a statement to F.B.I. Agent Harold Crossett at his office in McAllen about this incident, and that that statement was made several days later, so this statement was made even after you made your report to the F.B.I.?

A. Evidently it was, from looking at the last line in my report.

Q. And you don't have any independent recollection of how many days or weeks after that, that you—

A. —Not exactly—

Q. —prepared this written statement?

A. It was just shortly after it, but I would say a week or ten days.

Mr. De Anda: Judge, I believe that is in entirety the deposition of Mr. Bowers.

The Court: All right, it is after 5:00, and we will recess until 9:00 o'clock in the morning.

[498] (And thereafter on January the 28th, 1971, at 9:00 o'clock A.M., Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, and the following proceedings were had, to-wit:)

The Court: Please be seated, Gentlemen.

All right, yesterday evening Mr. De Anda left a few citations with me, and xerox copies, did you furnish them with the citations that you left?

Mr. Bowers: Yes, Your Honor, they have handed them to us this morning.

The Court: You may proceed.

Mr. Pain: Your Honor, at this time I will call Mr. Jerry Jones.

The Court: Mr. Pain, is Dr. White going to come back or are you going to bring—

Mr. Pain: —No, sir, he is not coming, Your Honor, and Dr. White has been notified.

The Court: All right.

[499]

GERALD JONES,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

## DIRECT EXAMINATION

By Mr. Pain:

Q. You were sworn earlier, were you not?

A. Yes, sir.

Q. Please state your name.

A. Gerald L. Jones.

Q. How are you employed, Mr. Jones?

A. I am Supervisory Deputy U. S. Marshal for the Southern District of Texas.

Q. What is your area of supervision?

A. In actuality, I am the third man in the District under the Chief Deputy; I have supervision over all of the Deputies in practice; however, I supervise the Deputies in far South Texas, and supervise the Deputies in Houston.

Q. All right, and what, what counties does this include that you supervise in South Texas?

[500] A. Well, the three Divisions would be Laredo, Brownsville, and Corpus Christi.

Q. That's good, how long have you been employed as a U. S., or Deputy U.S. Marshal?

A. Twenty-two years, sir.

Q. And how long have you been employed as a Supervisory Deputy U. S. Marshal?

A. Mr. Pain, I swear I don't know, seven or eight years, or more, I'm not sure.

Q. And where is your duty station?

A. Brownsville, Texas, at this time, sir.

Q. And your duties do cover Corpus Christi at times, do they not?

A. Yes, sir.

Q. And Laredo?

A. Yes, sir.

Q. And Brownsville?

A. Yes, sir.

Q. And other areas in that general area?

A. Yes, sir, on occasion, Houston, Galveston, and Victoria.

Q. Would you explain your duties as Deputy U. S. Marshal, and in your capacity, also, as a Supervising Deputy U. S. Marshal?

A. I perform all the duties of a Field Deputy, and [501] in addition thereto, I advise with and supervise the other boys in their duties. If they have problems that they are unsure of, it is quite often that they call me for direction and supervision.

Q. How many Deputies do you have under your supervision?

A. Seven now, maybe eight.

Q. Now you have been present during the proceedings in this trial, and you have heard mentioned the Deputy Marshal deal with Bowers, was he under your supervision in May of 1968?

A. Yes, sir, he was.

Q. And if he had any problem in connection with the performance of his duties, that he did not think he could solve himself, you would be the person that he would go to first, is that correct?

A. Ordinarily, yes, sir.

Q. When was the first time that you had any contact with the facts of this particular case here?

A. On May the 22nd I was in Court at Laredo. We had quite a heavy docket there, we had had a Grand Jury, I don't know what day that May the [502] 22nd fell on, but I know that we had had a Grand Jury immediately preceding that date. And I became aware that there was a sealed indictment against some eleven Defendants, of which Reagan Logue was one, I know that some of the Defendants were already in custody, and we received a warrant on the sealed indictments for a number of other Defendants. I do not, at this time, recall how many, but I know there were two or more.

Q. And you received a warrant for the arrest of Reagan Logue?

A. Yes, sir.

Q. And it was delivered to you for execution?

A. That is correct, sir.

Q. What did you do then?

A. I entered into a conversation with a number of the Customs Agents who were there attending Court, and endeavoring to ascertain some information about the case, and where, the whereabouts of these Defendants, the facts surrounding the situation, and, in other words, gathering all the information that I could in order to effectuate the arrest of the individuals we wanted to arrest.

[503] Q. How did you go about to effectuate their arrest?

A. I believe that Mr. Bennett actually made the telephone call on this particular Defendant, and I think I called some other office somewhere in the

Western District concerning another individual, but Mr. Bennett called Deputy Marshal Bowers, who was in Corpus Christi at the time in the absence of Mr. Schorre, who was the only resident Deputy that we had here, and gave him all of the information that we had. And before the conversation was over, I was through, and I came in and I talked to Mr. Bowers also.

Q. This was on the 22nd of May, 1968?

A. Yes, sir, that's correct.

Q. Is that correct?

A. I recall specifically that we did not have an address in the case file for Reagan Edward Logue in Laredo, and that through the conversations with agents and everything, I told Mr. Bowers that the agency service here had a, had an open file on this young man and could give him the address and probably help in locating the individual.

[504] Q. What next occurred after you delivered the message, or had the message delivered to Mr. Bowers for the arrest of Reagan Logue?

A. In connection with this case?

Q. Yes, sir.

A. He called me back sometime that day, I am not sure of any time because I made no note of it, I received telephone calls many times during the day—

Q. And what—

A. —but he called me and told me that he had arrested Reagan Logue, and gave me the circumstances surrounding the arrest.

Q. What next occurred in connection with this matter?

A. I think the next time that I heard anything in connection with the case was on May the 24th, two days later, when Mr. Bowers called me in the morning and, and advised me that Logue had cut himself the previous day in the Nueces County Jail. Now he had been absent at that time on a prisoner delivery to Houston and Galveston, and the prisoner had been removed to the hospital by the Sheriff's Deputies. He stated to me that Mr. Marvin Foster, Logue's [505] attorney, had requested that the treating doctor, that Dr. Shannon Gwin, a local psychiatrist, had been allowed to see Logue as a friend of the family, and that Gwin had seen Logue and ordered him confined to the psychiatric ward where he was at that time.

Q. What did you tell Bowers, if you recall, and if you told him anything during this conversation?

A. It seems to me that his concern was guards, I think, that it was nearing the week-end and he did talk to me about the fact that he had been away from home for some two or three weeks, and that he was having problems locating guards, and he didn't quite know what to do about it.

Q. Why was he concerned about guards?

A. Because it would be necessary to retain guards on a prisoner who was in the hospital, one who is actually in our custody. I went into quite a discussion with him about guards at that time; I asked him if, in his opinion, first, I asked him if he had visited the psychiatric ward, and he stated that he had. And I asked him if he thought it necessary to keep guards on him, what was the condition of the psychiatric ward, and I don't know whether it was in [506] this conversation or another one that he told

me, I don't know whether he had actually seen the psychiatric ward at that time or whether he said that he would look into it and advise me of it, but essentially he did tell me that in his opinion that the psychiatric ward would not be a suitable place to keep the prisoner without a guard on him, due to what he termed "loose key control" and the general atmosphere of the situation.

Q. Now you have been a Deputy Marshal for some twenty-two years, is that correct?

A. Yes, sir.

Q. During that time you have become familiar with all the procedures and requirements of being a Deputy U. S. Marshal and the Marshal's Manual, is that correct?

A. Yes, sir.

Q. What is the ordinary procedure concerning guards and a Federal prisoner who is transferred from a jail to a hospital?

A. We always place a twenty-four hour guard on that prisoner who is being kept anywhere outside of the confines of a jail.

Q. Why is that?

[507] A. To prevent his escape.

Q. All right, now after this conversation with Deputy Bowers, what next occurred in connection with this case?

A. I, I don't know whether it was in the same conversation, or in a subsequent conversation that we had this discussion about the security of the psychiatric ward there, and he did, though, tell me that he, in his opinion, felt it would not be safe to leave Logue there without guards on him. And I advised



him that it was his responsibility, that he had better get out and look up some guards, that he was not, he was wanting to go home, and I told him, "Don't you leave unless the situation is as it should be, and that it's your problem, you are there, you handle it."

Q. Now this was on the morning of the 24th?

A. Yes, sir, I, I am sure it was, yes.

Q. Do you recall talking to Marvin Foster that morning?

A. Yes, sir, not, I do not specifically recall when I talked to Mr. Foster, but I talked to Mr. Foster in connection with a telephone conversation that I was having with Mr. Bowers.

[508] Q. Did you have more than one telephone conversation with Mr Bowers and/or Mr. Foster during the day of the 24th?

A. I had only one with Mr. Foster, but I had several with Mr. Bowers, I know.

Q. Do you recall the next telephone conversation that you may have had with Mr. Bowers after the initial one?

A. I believe, I know that probably the last conversation that I had with Mr. Bowers was when I was directing him to remove Logue from the hospital and remove him to the jail, and the arrangements that were being made and so forth. Now I may have also had another conversation with him concerning the 4244 Commitment Order that Mr. Foster had talked to me about before.

Q. Before we get to that last conversation with Mr. Bowers, did you have any conversation with Casey Slocomb?

A. Yes, sir, I know I did.

Q. And who is Casey Slocomb?

A. He is the Chief Deputy.

Q. And he is a Supervisor, is that correct?

A. Yes, sir, that's correct.

Q. What was the content of the conversation you [509] had with Casey Slocomb?

A. Mr. Slocomb asked me if I thought that the jail would be a suitable place to keep Logue, that if, if I thought they had suitable facilities, and I assured him that I thought they had.

Q. This was after Logue had cut himself and was in the hospital?

A. Yes, sir.

Q. This was pending his possible transfer back from the hospital to the jail?

A. Yes, sir, and I told him that I, myself, personally, would check on the situation, that I knew Mr. Lowrance there very well, the Chief Jailer, and I would advise him about it and let him know.

Q. Now you mentioned a conversation that you had on the telephone with Marvin Foster, was that on the 24th of May?

A. I am sure it was, yes, sir.

Q. Do you recall if that was in the morning or the afternoon?

A. I rather think it was in the morning; however, I could not be sure.

Q. What did he tell you?

A. He advised me that he had been trying to contact [510] Mr. Ronald Blask, who was the Assistant United States Attorney, in charge of criminal prosecutions at that time in Laredo, and with the end in view of seeking a 4244 Commitment for this

Defendant. He stated to me that he intended to bring this up at the time of arraignment of the Defendant in Court, and that he would go into the question of his mental competency at that time, and thought it would be wise, just as wise to do it now. And I told him that Mr. Blask was in Laredo; however, he was very busy, he had a tremendous case schedule, he was being harried, we were working quite hard in the Court also, and I told him that I would be glad to take it up with Mr. Blask and the Court for him and that I was sure there wouldn't be any problem with the thing.

Q. All right, before you go any further concerning what you may have done later, what is a 4244 Commitment?

A. It is a commitment by the Court in which a, when a person who is accused of an offense comes before the Court and is mentally, his competency is put into question, both at the time of the commission of the offense and his competency [511] to stand trial at the time is put into question, the Court commits the Defendant to, usually the Medical Center at Springfield to get a Government psychiatrist's opinion as to both questions.

Q. In your capacity as Deputy United States Marshal for the past twenty-two years, have you had the occasion to handle many of these 4244 Commitments?

A. Yes, sir, many.

Q. Now going back to the conversation that you had with Marvin Foster, he mentioned a 4244 Commitment, what did you, and you told him that Mr.

Blask was rather busy, what occurred, then, in connection with that conversation?

A. I, I told him further, I said, "If you want me to," he had already intimated that he would like for me to take it up with Mr. Blask, I told him that I would be glad to do so, and if there were any question at all whatsoever, I would have Mr. Blask call him. I thought he would have much greater luck in getting in touch with Mr., Mr. Blask by having Mr. Blask call him when he could.

Q. So would it be accurate to say that the gist of [512] Mr. Foster's conversation to you was that he wanted a 4244 Commitment for Reagan Logue?

A. Correct.

Q. And what, if anything, did you do or tell Mr. Blask then?

A. I told him exactly what had transpired. I told him that we had arrested this young man, that he had cut himself on the arm, and had been committed to the hospital, and Marvin had told me that he intended to bring up the matter of his mental competency at the time of arraignment, would you just as soon do it now and see if the Court would have him committed for observation under a 4244. And he said, he said, "I see nothing wrong with it," and he and I both went to Judge Connally, and Judge Connally readily agreed to issue a Writ, I told him all about the situation—

Q. —You told Judge Connally about the situation?

A. Yes, sir.

Q. In his Chambers?

A. Yes, sir.

Q. Did the Judge indicate that he would sign the Order?

A. Yes, sir, he did.

[513] Q. You didn't actually see him sign the Order at that time, did you?

A. No, sir.

Q. Could you tell us something about the mechanical procedure that the, that you have known in your past concerning the formal execution of these orders with Judge Connally?

A. You mean the drawing of the Writ, or the execution of the Writ, or—

Q. —Yes, sir, what I'm driving at is, he indicated that he would sign the Order, but I think that the Order itself shows a subsequent date, why would that be?

A. The Order itself would have been drawn by the United States Attorney's Office, and would be submitted to the Clerk, which, in turn, would have been handed to the Judge. He would have signed it, and we probably would have received copies of the, certified copies from the Clerk.

Q. So the actual date that might be on the Order might be a time later than when you received information that the Judge said he was going to sign it?

A. Yes, sir, it might be the same date, or it might be a subsequent date.

[514] Q. Now you, together with Mr. Blask, went to see Judge Connally. Was that very shortly after the conversation that you had with Marvin Foster?

A. I am sure it was. It was either during a morning recess or the noon recess, one of the two.

Q. It was on the same day?

A. Yes, sir.

Q. What did you do in connection with this case

after you were with Mr. Blask in Judge Connally's Chambers?

A. I don't know that I physically did anything. I am sure that I probably advised Mr. Bowers during one of our conversations that the Judge had agreed to issue a 4244 Commitment Order, and that he might advise Mr. Foster so that he wouldn't be waiting for Mr. Blask to call.

Q. Now during this time, that Marvin Foster called requesting the 4244 Commitment and the time that you went with Mr. Blask to see Judge Connally, this was at a time when it was your information and knowledge that the boy was in the hospital?

A. That is correct, yes, sir.

Q. Now did you subsequently telephone Mr. Bowers and give him any instructions?

A. Yes, after having received the phone call from [515] Mr. Slocomb, I know that Mr. Bowers had also been in contact with Mr. Slocomb—

Q. —What was the content of your telephone conversation with Mr. Bowers?

A. I told him that I had made arrangements to remove the boy back to the jail; that I had, actually I had tried to call him and was unable to find him, I was unable to locate him, and then I had called Mr. Lowrance, the Chief Jailer, at the Nueces County Jail, and had told him that we were preparing to move this prisoner back to the Nueces County Jail. And if he thought that they had a safe place to keep him, and he assured me that he did, and I advised with him concerning the measures that I wanted taken.

Q. Why did you indicate to him that you wanted a safe place for this boy?

A. Well, because I, I, I told him he had suicidal tendencies, he had cut himself, and I told him, "You will not have to hold him long, we intend to move him in a very short time to an institution, but we want to get him back into the jail, we want a safe place to keep him and make sure he is safely kept until such time as we can pick him up and transfer him to an institution."

[516] Q. This was your conversation with Mr. Tom Lowrance, is that correct?

A. Yes, sir, and I asked him if he had a cell available that was readily available and could be kept under surveillance, and that he would keep it, clean the cell thoroughly, make a thorough inspection, and remove everything from the cell that this young man might possibly hurt himself with; that he place a mattress or a pad in the cell on the floor; and that he strip this young man when he went into the cell.

Q. What was Mr. Lowrance's reply?

A. He said, "Yes," he could certainly do that. Also, I, I, I had known Mr. Lowrance as an old officer here, who I knew had had as much or more experience than I ever had in this sort of situation, but I did go into details with him as to the things that I thought would be advisable, inspecting and stripping the cell, stripping the Defendant before placing him in the cell, and keeping close watch over him. I also suggested to him that it might be well to place trustees, either in the cell or outside of the cell near where they could observe him.

[517] Q. Then did you issue some directions to Deputy Bowers?

A. Yes, I called Mr. Bowers and I told him about these arrangements, arrangements that I had made, at which time he protested, "Well, Gerald," he says, "I don't have a doctor's release yet," and I said, "Well, Blackie, I, I, I just talked to Mr. Slocomb about this same thing and I know, although he did not say so, from the tenor of his conversation, he was under the assumption that you had received a doctor's release for the prisoner or he would not have even gone into these instructions. You must have called him, what did you talk to him about, how could you have given him the impression?" And he says, "Well, I don't know." I said, "Well, let me tell you this—disregard this so far," I says, "I want you to make, go and look at the arrangements that Mr. Lowrance has made, I want you to personally inspect the situation yourself, I want you to inspect the jail, I want you to see that everything is in readiness," and I went over this sort of thing with him. And then, "I would suggest that you call the doctor and advise him that we do have this 4244, 4244 [518] Commitment pending, that we would like to move the prisoner back to the jail, and ask him if he will give you a release." And he said that he would. I said in the event that the doctor does not deem it advisable to give you a release, you are to do nothing, leave the prisoner exactly where he is and simply advise Mr. Slocomb.

Q. Now in your duties as Deputy U. S. Marshal, you come into contact with a number of jails in the South Texas area, do you not?



A. Yes, sir, in fact, all over the United States.

Q. And these jails are not all necessarily federal institutions, are they?

A. No, sir.

Q. But yet you put federal prisoners in them?

A. Yes, sir.

Q. What allows you to do that?

A. We have jail contracts with jails that are approved by the Bureau of Prisons. We tell them our needs and they, in effect, they negotiate contracts with various counties so that we may have federally approved jails. Some of them, there are variations in the things that we are approved for.

[519] Q. All right, then the method by which federal prisoners are kept, are allowed to be kept in these state jails, are the jail contracts, is that correct?

A. Yes, sir.

Q. Are all the jail contracts the same?

A. No, sir, we negotiate a jail contract with each individual county jail and Sheriff.

Q. How do you pay these jails?

A. Well, simply what we pay is on a per head basis, per head per day.

Q. Per head per day basis?

A. Yes, sir.

Q. And not a straight monthly—

A. —No, sir—

Q. —monthly retainer or salary or fee?

A. No, sir.

Q. Now when you put a federal prisoner in one of these jails, is he separated from the other prisoners?

A. No, sir.

Q. Is he subject to any special privileges from the other prisoners?

A. No, sir, and the Bureau of Prisons would frown very muchly, very muchly so if he received any [520] better treatment than any other prisoner in the jail, whether it be federal, state, county.

Q. Does it, or do you consider the jailer of each jail to have control and custody of each—

Mr. De Anda: —Oh, Your Honor, I object to what this witness considers, whether he considered the jailer to have custody and control because, first of all, it is a conclusion, the jail contract speaks for itself, and the Statutes speak for themselves, and I don't believe it is up to this witness to interpret, by giving his legal conclusion, as to custody and control.

Mr. Pain: Your Honor, this wouldn't necessarily be a legal conclusion. That is based upon his experience, his twenty-two years of experience as a Deputy U. S. Marshal, his experiences with all these different jailers in these situations, irrespective of the fact that it may differ from what the jail contract is, and I am asking him what his experiences have been in connection with the custody and control of the prisoners.

[521] Mr. De Anda: Further, Your Honor, his experiences is really not relevant; it is what about this particular prisoner, the one that we are talking about, and unless it applies to this prisoner, it would be irrelevant and immaterial. I still maintain my objection as being, it being a legal conclusion as to the effect of it or the status of the, of the jailer of

the Sheriff's Department, I don't think this is a question of law, it's based on the facts and on the Statutes.

The Court: Well, I'm going to overrule the objection.

Mr. Pain: I forgot my question, would you please read it back, please, ma'am?

(The following question was read back by the Court Reporter and is as follows: "Does it, or do you consider the jailer of each jail to have control and custody of each—")

[522] By The Witness:

A. He does have actually physical control and custody of the prisoner in there, anyway, and in another sense, of course, we retain control over the prisoner.

Q. Now on various times and occasions, you have to go up and get these federal prisoners and to see them on occasions, do you not?

A. Yes, yes, sir.

Q. Do you feel obligated to check, check in with the jailer when you do?

Mr. De Anda: These questions are very leading and suggestive in form. I haven't objected up to now because it was not, I felt not on relevant matters, but I think now it's getting down to some meaty problems here, and I would prefer that he not lead the witness.

Mr. Pain: I will attempt to rephrase my question a little bit better, Your Honor.

The Court: Rephrase it.

Mr. Pain: All right.

By Mr. Pain:

Q. Have you had occasion to visit federal prisoners in these jails?

[523] A. Yes, sir.

Q. And what is the procedure that you go through when you do so visit?

A. Walk into the jail and say, "I want to see this prisoner so and so."

Q. If the jailer would say, "No, you can't see him," what, what would you do?

A. I would immediately ask why not.

Q. If the jailer said, "You can't go upstairs and see him," what would you do?

A. I would ask why not.

Q. And have you ever had the occasion to have that happen?

A. Yes, sir, I have.

Q. Then how would you see the prisoner?

A. I didn't see the prisoner. I thought the man's reasons were very good and I agreed with him and I left.

Q. Do the federal prisoners receive any different food than the state prisoners?

A. No, sir.

- Q. Are they subject to the same rules and regulations?

A. Yes, sir.

Q. And who makes those rules and regulations?

[524] A. The Sheriff's Department.

Q. Are they subject to the same visiting hours?

A. Sometimes they are, sometimes they are on staggered days in a jail which may, half of its population may be federal prisoners, and there will be one visiting day for federal prisoners and possibly another visiting day for state prisoners, but—

Q. —Who sets up these hours?

A. The Sheriff.

Q. Do they wear the same clothes, same clothing, they, meaning the federal prisoners, do they wear the same clothing as the other prisoners?

A. Yes, sir.

Q. And they have the same bedding and other arrangements?

A. Yes, sir.

Q. And who makes that determination?

A. The Sheriff.

Q. From your handling of federal prisoners in these jails, have you ever had suicide attempts?

A. Yes, sir, many of them.

Q. How are you ordinarily notified of this?

A. I am usually called from the jail.

Q. By one of the jailers?

[525] A. Yes, sir.

Q. What is the first thing you tell them?

A. I ask him, "Have you called the doctor?"

Q. Then what do you do?

Mr. De Anda: Your Honor, I'm going to object to all of this matter, what he usually does when he has

suicidal attempts; I don't see the relevancy of it at all, Judge.

The Court: I agree with you, I don't think there is any relevancy as to what he does himself in connection with suicide attempts, and in other instances, when he wasn't actually the one on the ground in connection with this one.

By Mr. Pain:

Q. Now you have had some of your federal prisoners taken to hospitals as a result of injuries received in the jail, have you not?

A. Yes, sir, you mean by others, other than Deputy Marshals or myself?

Q. Yes, sir.

A. Yes, sir, uh-huh.

Q. And what is the first thing that you are concerned with, if anything, when you find out [526] that one of these prisoners has been taken to the hospital?

Mr. De Anda: Your Honor, again, I don't see the relevancy of all this testimony. He may be trying to get something, I don't know, but I know what the matters are that are being presented and I don't think they are relevant at all to this case.

The Court: Well, I think maybe, I don't know because I am not pre-judging any of the questions of law, but I think perhaps custom may have some relevancy, that in the course of years of experience these have been handled in a particular way.

Mr. De Anda: All right, sir.

By Mr. Pain:

Q. What is the first thing that you do ordinarily?

A. I try to find out the extent of the problem, if the prisoner is going to be committed to the hospital; if he is going to be committed to the hospital, how long is he going to be there; if there is any chance that—

Q. —Who do you talk to on this?

A. Usually the doctor, the jail physician.

Q. The doctor that admitted the prisoner to the [527] hospital?

A. Yes, sir.

Q. And you find out from him how long he's going to be there?

A. Yes.

Q. Why is it that you are interested in that?

A. For several reasons. The first one is, the security of the prisoner, of course, we do not want him to escape; secondarily, we want to move him back into jail for that reason, and also to save expense, to save the taxpayers money.

Q. So then (do you get the, when you get the prisoner back from the hospital to the jail, you talk about a release, then, to the doctor, is that correct?

A. Yes, sir, in every instance. Of course, he is the doctor's responsibility, we can not move the prisoner without the doctor's okay.

Q. And you, yourself, have taken many prisoners back from the hospital to the jail in such situations as that?

A. Absolutely, yes, sir.

Q. And have you ever done so without a doctor's release?

A. Never, sir.

[528] Q. Would that be against your rules and regulations?

A. Yes, sir, absolutely.

Q. What do you do in the event that you want the prisoner back, but the doctor will not give you a release?

A. The prisoner stays in the hospital.

Q. Do you ever try to see if you can, he can be transferred to a federal hospital?

A. Yes, there would be occasions when we could possibly have a doctor examine a prisoner and say, "This man is going to need surgery," or some such situation, and we would ask him, "Well, is it an emergency at this time, is there a chance that maybe it could wait for a week or ten days, something like that," and if he says, "Yes," well, then, if he does need surgery, and will need it within that time, then we would try to take steps to move him to a federal institution so the surgery could be done there in the institutional hospital. Again, to save the taxpayers expenses.

Q. But still would you take him from the hospital without a release?

A. No, sir. I might say also, that in all the jails we have, we have a jail physician; the [529] contracts with, with every jail in this district, include the provisions that the county furnish a physician. In Webb County we have a federal physician who is paid a flat fee and then plus fees, fees and expenses



if he has to do anything other than make visitations in the jail and prescribe.

Q. But a prisoner uses his own private physician if he wants to, can he not?

A. No, no, sir, not when he is in our custody, he should not. We oftentimes, we have had this question on occasions; usually the way I handle it is, I say, "You will see the jail physician, and if he deems it necessary, he will call your physician." And the doctor on many occasions does call a prisoner's private physician, if he thinks there is reason to do so.

Q. Now how long were you Supervisory Agent over Deputy Bowers?

A. Ever since he went to work for us.

Q. And how long was that, do you remember?

A. Mr. Bowers worked with us, I believe, some eight years.

Q. And you—

A. —'62 or '63, something like that, '62 or '63 [530] when he went to work.

Q. Several years anyway?

A. Yes, sir.

Q. In your capacity as his Supervisor, you were familiar with the methods and the manner in which he handled many of his prisoners?

A. Yes, sir.

Q. Did you ever have any occasion to criticize him on the handling of his prisoners?

Mr. De Anda: Time out, Your Honor, I object to that.

The Court: And I will sustain the objection to that.

Mr. Pain: We pass the witness.

[531] CROSS EXAMINATION

By Mr. De Anda:

Q. Who is your jail physician here in Corpus Christi?

A. Dr. B. B. Grossman.

Q. Did you contact Dr. Grossman, or did anyone contact Dr. Grossman with reference to this case, Reagan Logue's case?

A. I did not. I didn't know until after Mr. Logue was dead that Mr. Grossman had not been the attending physician in the hospital. I was—

Q. —I see, you were under the impression he was one of the physicians involved?

A. Yes, I don't know why I had that impression, but I certainly was.

Q. All right, but now you know for a fact that he had absolutely nothing to do with this, and was not called by anyone, to your knowledge, connected with the Government?

A. That's correct, I found out, I found that out shortly thereafter in questioning Mr. Bowers.

Q. All right, I believe you testified, Mr. Jones, that in taking prisoners to the hospital, and for treatment, maybe suicide efforts, or maybe [532] something else, it is not an uncommon occurrence?

A. It is not an everyday occurrence, but I would say in my twenty-two years experience, I have

handled no fewer than fifty persons. Now you are talking about suicide attempts?

Q. No, I'm talking about people having to go to the hospital for anything.

A. It is not a common occurrence.

Q. Well, numerically it is not, but I'm not talking about the numericals, you mentioned fifty suicide attempts—

A. —I would say that I have handled no fewer than fifty, possibly as many as a hundred people who have cut themselves in the jail.

Q. And who required medical attention?

A. Yes, sir, required a few sutures.

Q. And then, of course, there have been, I presume, people that were in jail that did not attempt suicide, but required hospitalization?

A. Oh, yes, yes, sir.

Q. These would be almost, at least, as numerous as suicides, to put it in kind words for our jails—

A. —No, sir, I am afraid that is not the case.

Q. Okay, most emergencies go to the jail, go to the hospital from the jail, they do so because [533] they attempted suicide, at least the federal prisoners?

A. I would think there is probably a greater percentage of them who cut themselves.

Q. All right, in any event, this is handled by, when the man goes to the hospital, he stays in the hospital until the doctor releases him, then you put him back in jail?

A. Now what do you mean, you say this is handled—

Q. —Well, isn't, isn't this the way, isn't this the uniform invariable way in which this is done, that

the man is taken to the hospital when necessary and then not removed from the hospital until released by the doctor?

A. Yes, that's a fair statement.

Q. Have you known of any case where it was not done that way?

A. No.

Q. All right, and then we might accept this as the absolute, no exception practice in the Marshal's Office?

A. Getting a doctor's release prior to removing—

Q. —Yes.

A. Yes, sir, absolutely.

Q. And I am sure, then, that Mr. Bowers, you [534] supervised him, that he also had an occasion to take an attempted, attempted suicides to the hospitals as well as perhaps others?

A. Yes, sir.

Q. Who required hospitalization?

A. Yes, sir.

Q. So actually there was nothing to this, in a suicide case, ordinarily, to cause a great deal of turmoil or disturbance in the Marshal's Office, it is something that happens and you have to take care of it.

A. That is true.

Q. But in this particular case, there was a great many number of, although the practice is settled and undisputed, there was a great many conversations between you and Mr. Bowers and Mr. Slocomb about the removal of this man from the hospital?

A. I don't know that there were a great many. Mr. Slocomb and I had one conversation about the re-

removal of him, and Mr. Bowers and I had one conversation.

Q. You described several conversations with Mr. Bowers.

A. Yes, but they were not all concerning the removal [535] of the patient.

Q. All right, but apparently arrangements were made for the removal of the prisoner to jail before the doctor concurred that this should be done?

A. That's correct, I made the arrangements with the jail under the assumption that a release had already been obtained. I got this assumption from Mr. Slocomb's conversation with me.

Q. All right, there were several people talking back and forth, and then somewhere you got the assumption that the doctor had given a release?

A. Yes, sir.

Q. Just like you had the assumption that somewhere, somewhere that Dr. Grossman was involved?

A. Well, he should have been.

Q. All right, and also there should have been a release before these arrangements, so I think that might be a fair way that you got the assumption, that you were sitting there making arrangements to get this fellow back in jail and trying to find a safe place for him, and you were going through all of these gymnastics assuming the doctor had, had agreed to it, that it could be done?

[536] A. That a release would be given.

Q. Had been given?

A. I'm sorry, I'm afraid I don't understand your question, Jim.

Q. In other words, these things that you were do-

ing were not done at the doctor's suggestion, you were just doing them because, under the circumstances that were related to you, you you knew that this man had suicidal tendencies and was apparently committed toward taking his own life if the opportunity presented itself?

A. Well, I wouldn't say that I had made that assumption, no.

Q. Well, it seems to me that in your conversation with Mr. Lowrance, as you have described it, and I think also from what Mr. Slocomb says here in his deposition, and we read that in your presence, that you set up several rules there for Mr. Lowrance to follow, I believe you referred to them as suggestions.

A. Uh-huh.

Q. As to how to keep this particular prisoner.

A. Yes, sir.

Q. Now those rules that you gave Mr. Lowrance were given because you knew that that was the only [537] way to safely keep the prisoner?

A. That's true and correct.

Q. If those rules were not followed, then it would be unsafe to keep this man in jail whether the doctor released him or not?

A. That's true and correct, if he did have intentions of committing suicide.

Q. Yes, sir, well, there is no question about that, is there?

A. There is no question that he did.

Q. All right, and he had tried it before and, and, I believe, as I listened to Mr. Foster's testimony and Mr. Bowers' testimony, everyone indicated they were gravely concerned that this youngster might do exactly this, is that right?

A. Yes.

Q. And, of course, these concerns were expressed to you in your conversations with Mr. Bowers and Mr. Foster?

A. Yes.

Q. And as a matter of fact, you made certain comments to the Court, or at least Mr. Blask did in your presence, that were talked about, that led Judge Connally to sign an Order, that he had reason to believe or thought the United [538] States Attorney had reason to believe that the Defendant may be presently insane or mentally incompetent?

A. Mentally incompetent was what he used. Now I gathered several things from the information that was given to me.

Q. Well, but all I am asking you is, it was based on what you told Judge Connally, and what Mr. Blask told Judge Connally, that Judge Connally signed this Order stating that the man may be presently insane or otherwise mentally incompetent?

A. That is true.

Q. All right, and now, now Mr. Slocomb, in his deposition, and I want to be sure we all agree on this now, in testifying with reference to the messages that he received, telephone conversations that he received from you and Mr. Bowers, makes this statement in his deposition, this is on Page 5, George, if you are interested—"The psychiatrist informed that the boy was withdrawing from the use of LSD, that the patient had suicidal tendencies, and the psychiatrist recommended to Deputy Bowers that we leave the boy in the hospital with guards until such time [539] as we could commit him to a federal institution."

This was your, your understanding of it, too, Mr. Jones, in your conversations with Mr. Bowers and Mr. Slocomb?

A. It was after he had seen Dr. Gwin for the first time in the hospital that morning, yes, he conveyed that information to me.

Q. All right.

A. He didn't convey it in exactly that sequence, no, but he said that Dr. Gwin had said that the boy was suffering from, actually a psychosis brought on, brought about by the use of LSD, glue, and peyote, and marijuana, and he mentioned all four of the agents there.

Q. All right, well, that would make it even worse, wouldn't it?

A. Well, it's quite possible, yes.

Q. All right, in any event, you, at that time, knew that the doctor had recommended that, that the youngster remain in the hospital until committed to another institution?

A. Yes.

Q. All right, then somewhere along the way, you were left with the erroneous impression, or you got the erroneous impression that the doctor had [540 released the young man to go back to jail, the magic word, "release", take him out—

A. —Yes—

Q. —and so you made these arrangements?

A. Uh-huh.

Q. Which you considered to, to comply with your duties to safely keep this man?

A. Yes.

Q. And you told Mr. Lowrance that he ought to have



this mattress on the floor, have no movable or removable objects in the cell, that a trustee ought to be sitting in the cell with him, or two, or one right there where he could watch him continually, and also you indicated, I think, that he was not to have any clothing?

A. That's correct.

Q. Or wearing apparel on him, other than perhaps shorts, something like that, I guess?

A. That's true.

Q. And you made these requirements because this is what it took, based on your experiences?

A. Yes.

Q. And recognizing the problem that you had to, to keep this boy from hurting himself?

A. Correct.

[541] Q. And actually, in fact, I suppose if those things had been done, the boy wouldn't have hung himself?

A. There would have been no way for him to have hung himself if those had been done.

Q. It was because those things were not done that this happened?

A. Yes.

Q. Now as far as the release, as I understand it, it came back as a shock to you when you talked to Mr. Bowers in a subsequent conversation, and after all these arrangements had been made, it came as a shock to you that he could have, that the doctor had, in fact, not changed his opinion, that he still thought the man, as far as you knew, should remain in the hospital until committed to another medical facility?

A. No, it surprised me when Mr. Bowers told me that he did not have the doctor's release because I knew Mr. Slocomb would not have called me unless he was under that impression, and the only place he could have gotten it was from Mr. Bowers.

Q. Well, that eliminates you and Slocomb, but that leaves Blackie. All right, now, so then you [542] told Mr. Bowers, "All right, now we have made these arrangements, we've got this situation, we've got this Judge's Order committing him to a hospital; now you go get that release from the doctor," or words to that effect?

A. I told him to call the doctor and tell him of the arrangements that had been made in their entirety; to tell him that we were in the process of getting the 4244 Commitment; that the prisoner would be moved sometime within the near future, probably, possibly no longer than three days or a week at the most; that these arrangements had been made, and a cell had been stripped, and the way the prisoner was to be handled and so forth, and to ask him if he would give a release under those circumstances.

Q. But, and then Mr. Bowers, apparently in his conversation with the doctor, as I read Mr. Bowers' deposition, and also from the doctor's own testimony, when it got to the doctor, the Judge had ordered all this. Did, well, would you know anything about that or did you have any conversation with Mr. Bowers as to exactly what he told the doctor?

A. No, I did, did not.

[543] Q. All right.

A. But I don't believe Shannon Gwin would get

any wrong ideas; we use him quite often as a Court psychiatrist.

Q. All right, well, I'm sure he didn't. Now let's talk a little about, let's talk a little bit about federal prisoners in these jails. Of course, as you pointed out, when you put a man in jail, you turn him over to the Sheriff, the actual control of his body is with the Sheriff?

A. Correct.

Q. Or whoever is operating the jail, whoever that happens to be?

A. Yes, sir.

Q. But it is understood by everyone, isn't it, that this man is your prisoner?

A. Yes, sir.

Q. And by golley he leaves that jail when you want him to leave?

A. Correct.

Q. And he is handled the way you want him to be handled, if there is any special variations surrounding that, that requires special handling?

[544] A. There are a few exceptions. Some jails have some real good rules and maximum security cells. I know the Hidalgo County Jail is that way now and has been for a number of years. I don't care who you are, you are not going to remove a prisoner from the maximum security cells after 7:00 o'clock in the evening; that goes for the Marshal, too, even if it's his own prisoner.

Q. And you know that rule when you put the man in there?

A. That was the one that I was turned down on for the first time.

Q. All right, that is a sound rule, and—

A. —Yes, sir—

Q. —one that you commend, so you understood that is the rule and that's the arrangement under which you put the man in jail?

A. Yes, sir, and it was for a very good reason.

Q. If you didn't recognize that rule and didn't think it reasonable, you simply wouldn't use that facility or make them change the rule?

A. I don't know whether I could or not.

Q. Well, I said, they can't make you put your jail, your prisoners in there?

[545] A. No, but it would be very, very unhandy for me to put them anywhere else, Mr. De Anda, I'll tell you.

Q. But this rule, and other rules, do they have any such rule in the Nueces County Jail?

A. I don't know; I rather doubt it.

Q. Have you ever had the—the Nueces County Jail in its operations, that's the jail we are talking about?

A. Yes.

Q. Balk on anything that you wanted done with a single one of your prisoners?

A. No, sir.

Q. As I understand it, the procedures and the protocol, they were desperately trying to get ahold of the Marshal when this man tried to cut himself?

A. I am sure they probably were.

Q. And when he got to the hospital, the Marshal took over the management of the prisoner?

A. Correct.

Q. And there was no argument about that?

A. No, ordinarily no one can remove a federal prisoner from the jail except a Marshal.

Q. I see.

[546] A. Except in emergency situations.

Q. All right, that's because you really have control over the prisoner?

A. Yes, in that respect, yes.

Q. All right, and the, and the jailer, the jail is an accommodation to and service that is available to you?

A. Yes, that is—

Q. —But there is no doubt about the fact that you are the person that has the natural custody of him and that the, that the jailers are acting at your suggestions and trying to accommodate you in whatever way you see fit as regards that prisoner?

A. Well, of course, they are charged with the keeping of the prisoners, the physical custody of the prisoner, yes, sir.

Q. Like I say, when special circumstances arise that deviate from the routine, deference is paid to your suggestions and what you want done?

A. As long as they are reasonable; we always try to be reasonable, and the Sheriff, of course, is also reasonable with his rules.

Q. Certainly, I understand that, and if he ever had a rule that you couldn't live with, you [547] didn't think was right, you would certainly make that known to the Sheriff and, and let him know how you felt about it?

A. Yes, sir, and if he doesn't have some rules that I think he ought to have, occasionally I will go to him and suggest that he implement them.

Q. As far as your prisoners—

A. —Sometimes he does and sometimes he doesn't.

Q. But either the rule is something you can live

with and accept as being reasonable, or you could remove the prisoner?

A. Yes, we could. He could also tell us to remove the prisoner if he took a notion.

Q. Surely, but to make a long story short, the arrangements for this man, you gave to Mr. Lowrance as what you wanted done with the man when he was returned to jail?

A. Yes.

Q. And I assume Mr. Lowrance gave you every indication that he, that these arrangements would be followed?

A. Yes.

Q. And had he, had he given you any indication he would not do what you suggested, you probably would not ever have removed him from the [548] hospital?

A. That is correct, yes, sir. I think probably every suggestion that I gave him is what is done with the handling of mental patients in every jail in Texas that handles mental patients.

Q. Well, except one, unless you do not keep, have a cellmate, or keep, or a, some trustee sitting there watching a man, like you suggested in this case?

A. I have on several occasions, yes, sir.

Q. You have on several occasions, but this is not the absolute, irrevocable, without exception rule?

A. No, I wouldn't say so. In every case it would depend on the circumstances.

Q. All right, and the circumstances that were given you in this case—

A. —Yes—

Q. —and the facts as you knew them to be were

such that you thought this was a, was a safety requirement?

A. Not necessarily so, but I thought that it might be something that he might use to keep, to keep this prisoner under observation.

Q. All right.

A. There are other things that can happen to [549] prisoners that are in isolation cells other than—well, they are able to get things from the outside, on occasion.

Q. All right, but what I'm saying, in this case, regardless of the whys or wherefores, you thought this was one of the precautions that was needed to be taken?

A. I did advise it. I don't know that I actually advised him, but I told him, I suggested to him that it might be well to place a jail trustee either in or near the cell.

Q. All right, the object being to keep the man under observation?

A. Surely, yes, sir.

Q. All right. Mr. Slocomb made the same comments in his deposition, if you recall—

A. —Uh-huh.

Q. Right here is what Mr. Slocomb said, Page 7, "Deputy Jones further advised me he had requested the jailer to place a couple of trustees in or near by the cell to observe the boy—"

A. Uh-huh.

Q. So there ain't no question but what you made a suggestion?

[550] A. Yes, I know I did.

Q. All right, and I believe you heard the reading

of Mr. Bowers' deposition, and he said he would consider it unsafe and would not have agreed to, for the youngster to be in jail, but for these rules including this particular one that I am emphasizing right now, because it was the one that was breached, to keep the boy under observation and to have someone in the cell with him.

A. No, I didn't hear that, I don't know.

Q. All right.

A. I may have missed it, though.

Q. Okay, sure, I miss a lot of things myself.

A. Sure.

Q. And if the release that was obtained from the doctor, this magic thing, go ahead, I will give him back to you, was done, either by applying pressure on the doctor to do it, or because the doctor was ill advised and left with the impression that the Judge had ordered it to be done, then that would not be in keeping with your usual procedures, assuming that was done?

A. Well—

Q. —I know you are going to say it wasn't done, [551] and that's fine—

A. —I have never been able to pressure a doctor yet, Jim.

Q. I'm not saying you did it, but now I am saying that it happened in this case.

A. Uh-huh.

Q. Either through inadvertence or for whatever reason there was, that would not be in keeping with your procedures?

A. No.

Q. And this was an unwise thing to do?



A. Well, I don't quite follow you.

Q. Well, it would be a dangerous thing to do, to let the medical judgment, the Deputy Marshal be injected into the medical judgment of the doctor and be determinative of whether or not a man stays in the hospital, that's what I'm getting at?

A. I don't know, you might have a Deputy Marshal that was almost a doctor, you can't tell.

Q. Well, I didn't—let me ask you this—did Blackie Bowers have any medical—

A. —No, he did not—

Q. —training?

A. No, he did not, certainly not.

[552] Q. All right, assuming that Mr. Bowers had either intentionally, or unintentionally, left the doctor with the impression that the Judge, Judge Connally had ordered this youngster's removal to jail, first of all, that would not be correct, would it?

A. No, sir, it would not.

Q. And secondly, it would not be in keeping with the Marshal's Office procedures and practices, would it?

A. No, sir.

Q. And if, and it would be unwise, a dangerous thing to do, wouldn't it?

A. It certainly would be stupid on top of it.

Q. All right.

A. And I don't think you will find any doctor who is going to let any Judge tell him who to put in jail.

Q. All right, I'm just saying, as far as your office is concerned, this would be terrible?

A. Yes.

Q. Mr. Jones, did you, did you make any statements

to anyone shortly after this happened, to the F.B.I., or anybody, about this matter?

A. Yes, sir, I did.

[553] Q. Written statements?

A. Yes, sir.

Q. Have you been provided with a copy of that?

A. Not the statement that I made to the F.B.I. within a very short time after this incident happened. After I made the statement to the F.B.I., I wrote my report which was sent to our department in Washington.

Q. Do you have a copy of that?

A. Do I have a copy of that? Yes, sir.

Q. I'm sure you read it before testifying to refresh your memory?

A. Yes, sir, I refreshed my memory from it while I was testifying.

Q. May I see that, please, sir?

A. Yes, sir, incidentally, that's the only copy I have, Mr. De Anda.

Q. All right, I will give it back to you.

A. Okay.

Q. I don't want to take the time to review this; you're going to be around during the Court trial, and if anything comes up that I want to ask you about it, I can.

Mr. Pain: I think I gave you a copy of that.

[554] Mr. De Anda: No, sir, not Jones.

The Witness: Yes, sir, I will be around.

By Mr. De Anda:

Q. Now one other matter that I want to point to, I want to mention to you and see if you concur—I believe in Mr. Slocomb's deposition he states that had Mr. Logue, had Reagan not killed himself, that within twenty-four hours after the Commitment Order had been signed by the Judge, that your office, or the Marshal's Office could have had this youngster on his way to the hospital.

A. Mr. Slocomb said that we could have moved him within twenty-four hours?

Q. I want to be fair with you, I think so, let me see what I read—well, here's exactly what it is, that I was referring to, "If we had had the Court Order in hand, and the patient in hand, available for immediate transfer, I think that by making a long-distance telephone request to the Washington offices, in that case we could have commenced the trip possibly within twenty-four hours after making the calls."

A. We could have probably gotten a designation on him and would have been ready to. Now now [555] whether or not we had the man power available to actually commence the trip or not, I do not know. We were tremendously busy in the District, we were short-handed, we had eleven men at that time and we needed about forty. We already had Mr. Schorre out of the District, we were absolutely tied up in Laredo, the two of us there, we could have used three more, and I don't know where we would have gotten the man to move him. We may have, I don't know.

Q. Well, will you agree with Slocomb or don't you?

A. I always agree with Mr. Slocomb. If Mr. Slocomb said that he could have and would have moved a man within twenty-four hours, he would have moved him one way or the other.

Q. All right, in other words, somehow or other you would have come up with a man?

A. Yes, we may not have, we may have called in a man from another District.

Q. All right, now there is absolutely nothing in your rules and regulations that would have prevented you from moving this man directly from Memorial hospital to a medical facility if it was necessary, isn't that right?

A. Do you mean in one continuous movement?

[556] Q. Well, however, I don't know how many movements you would need, it would depend on where you were going and how you got him there, but I mean there was no necessity in confining him back in the County Jail to get him to Springfield?

A. There, we would have had to confine him in jail before we got in Springfield, I mean your trip was that long.

Q. Yes, and, and you would have had people with him?

A. Yes.

Q. And that would have been handled however it was necessary to handle?

A. Yes, sir.

Q. But what I am getting at, there was no magic in taking him back to the Nueces County Jail, that wasn't a requirement for you to start your trip to Springfield?

A. No, sir, I wasn't dealing in magic.

Q. All right, in other words, you could have, you could have taken him had the doctor not released him?

A. Yes.

Q. Had the doctor said, "I'm not going to, I'm not going to release him until you just walk [557] over my dead body," and you would have left him in jail, I mean, I'm sorry, in the hospital? You could have taken him from the hospital to, to your federal medical facility?

A. We couldn't have taken him to the medical facility without the doctor's release.

Q. I mean if he had permitted you to do that, you could have?

A. Yes.

Q. The reason I am asking you this is, there was something in the deposition here that disturbed me about the necessity of taking him back to jail; there was no need to take him back to jail if the situation didn't call for it?

A. I lost you.

Q. It's so easy. All right, strike that question and let me try again—if the judgment had been such that he couldn't be removed to the County Jail because the doctor didn't want you to, and said, "I will only release him if you will take him to Springfield," then you could have done that, you could have taken him directly from Memorial Hospital to the Springfield facility?

A. Oh, yes, sir, sure.

Q. All right.

[558] A. It would ,of course, there would have been an overnight stop somewhere between here and—

Q. —Yes, sir—

A. —between here and Springfield, at least one, even if we had hauled this prisoner and no other, there would have had to be one stop, and incidentally, I had made plans for this same situation.

Q. I understand that. Now while this man is in your custody because of the Court processes, no matter who actually has him, you consider him a man in your custody, do you not, Mr. Jones?

A. Yes, sir.

Q. Or your office, is that right?

A. Yes, sir.

Q. And you feel like you are responsible for him or make arrangements to see that he is properly kept?

A. Yes, however, if he escapes from the jail, the responsibility is not charged to you, it is charged to the jail; occasionally we put the jailer in jail.

Mr. De Anda: I pass the witness, Your Honor.

The Court: Mr. Pain?

[559] REDIRECT EXAMINATION

By Mr. Pain:

Q. On these 4244 Commitments, where are the prisoners ordinarily taken?

A. Actually, actually they may be taken to almost any institution, but ordinarily they are taken to the Medical Center at Springfield.

Q. Springfield, Missouri?

A. Yes, sir, at Springfield, Missouri.

Q. Have you made that trip very often?

A. Many, many times, yes, sir.

Q. From Brownsville?

A. Yes, sir.

Q. From Corpus Christi?

A. And from Laredo and from Houston.

Q. How far is it?

A. From where?

Q. From Corpus Christi to Springfield?

A. From Corpus Christi to Springfield—it is just under a thousand miles, it would be about nine hundred something, a little over.

Q. By what mode of transportation do you ordinarily get there with a prisoner?

A. By automobile.

[560] Q. How long would it take you to drive it?

A. Two days minimum, and I would have to crowd it both days.

Q. If you were to start early in the morning from Corpus Christi to go to Springfield, where would you stop?

Mr. De Anda: Just a minute, Your Honor, I don't see the relevancy of that at all.

The Court: What is the relevancy?

Mr. Pain: Well, Your Honor, I want to point out that he would, by necessity, have to stop overnight, and I want to see what he would do with the prisoner overnight.

Mr. De Anda: I would assume he would take good care of him. If he didn't, it would be very bad, but I don't see the relevancy of this.

The Court: I don't see any relevancy of that, of what you would do, I'm sure they would put him in some jail or take care of him some way, but I don't see the relevancy of it after you leave here on that trip.

By Mr. Pain:

Q. Have you had the occasion to have many mental [561] patients as federal prisoners?

A. Yes, I have had a number of mental patients as federal prisoners.

Q. And is it part of your ordinary course, ordinary course of your procedures to put them in jail before a hospital commitment?

A. Yes, sometimes they stay in the jail as a mental patient prior to the time that they are committed to the hospital.

Q. Prior to the time they are committed to the hospital?

A. Yes, sir.

Q. Now if there were a jail, a non-federal jail, with whom you had federal prisoners, that had a particular rule that you did not like, you could suggest a change, could you not?

A. Yes, sir.

Q. But would you have the power to change that rule?

A. No, sir, the jail belongs to the Sheriff, it's his baby.

Q. And if you could not change that rule, that you



did not like, is it accurate to say you would have two choices; one, you would have to put up with the rule, or two, you could remove your [562] federal prisoners?

A. In the jails that I actually do business with, I certainly wouldn't remove my prisoners from them, I couldn't.

Q. This would be about the only choice you would have?

A. Yes, sir, yes, sir.

Q. And you felt like you could put up with the rules?

A. Yes, sir, yes, sir.

Mr. Pain: Pass the witness.

Mr. De Anda: Your Honor, subject to some other cross examination that might develop because of this statement, I don't have any further questions of Mr. Jones.

The Court: All right, Mr. Jones, you may step down.

The Witness: Thank you, sir.

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WITNESS EXCUSED

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Mr. Pain: Call Mr. Tom Lowrance. He needs to be sworn, Carolyn.

[563] (Oath administered to the witness by the Deputy Court Clerk.)

TOM LOWRANCE,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. Pain:

Q. Would you state your name, please, sir?

A. Tom Lowrance.

Q. And how do you spell your last name?

A. (Spelling) L-O-W-R-A-N-C-E.

Q. Where do you live, Mr. Lowrance?

A. I live in the Valley, close to Harlingen.

Q. How long have you lived there?

A. It will be two years in April.

Q. What is your occupation, what do you do now?

A. I am retired.

Q. And what was your occupation prior to your retirement?

A. I worked for the Sheriff's Office, County Jailer.

[564] Q. Here in Nueces County?

A. Yes, sir.

Q. And how long were you the County Jailer?

A. Over twenty years.

Q. And were you the County Jailer during the month of May, 1968?

A. Yes, sir.

Q. What were your duties as County Jailer?

A. Well, just to run the jail and see that everything is carried on.

Q. Take care of the prisoners?

A. Yes, sir.

Q. And to whom are you directly responsible?

A. The Sheriff, Sheriff Johnnie Mitchell.

Q. And was he the Sheriff during May of 1968?

A. Yes, sir.

Q. How long had he been Sheriff at that time, do you remember?

A. I believe it was about twelve or fourteen years, I wouldn't swear.

Q. Uh-huh, you've got a pretty good idea of the facts about this lawsuit, do you not?

A. Well, yes, sir.

Q. Do you recall that in May of 1968, a prisoner by the name of Reagan Logue was—

[565] A. —Yes, sir.

Q. What was the first thing that brought your attention to this particular prisoner?

A. Well, he was brought up and booked in jail.

Q. When he was first brought up—

A. —Yes, sir—

Q. —who brought him up?

A. I wouldn't recall just who brought him in when he was first brought in there, I don't—

Q. —And this was in May of '68?

A. Yes, sir.

Q. Did anything unusual happen after he was brought in?

A. Yes, sir.

Q. What was that?

A. Well, he cut his arm. (Indicating)

Q. Was it a very bad cut?

A. Well, I didn't see it at the time, when he first cut it, but—

Q. —How did you find out that he had cut himself?

A. Well, the turnkeys come down and said that he had cut it, and they sent him to the hospital. I wasn't there at the time that he cut it.

Q. Where were you?

A. I had just went home.

[566] Q. Now—

A. —I was off duty.

Q. What time of the day was this?

A. I'd say about, I'd say it was around 4:00 o'clock, 3:30 or 4:00 o'clock when I went home.

Q. And it was a short time after that, that you received this word?

A. Yes, sir.

Q. And one of the turnkeys called you and told you he had cut himself?

A. Yes, sir.

Q. What did you do then?

A. Well, I told him, they took him to the hospital and I told them to station a guard with him and keep guards on him, and try to get ahold of the Marshal.

Q. Did you go to work the next day?

A. Yes, sir.

Q. Did you have anything to do with Reagan Logue the next day?

A. No, sir.

Q. That you can recall?

A. No, sir, he was at the hospital.

Q. Did you get any, did you have an occasion to have a conversation with Deputy Marshal Gerald [567] Jones?

A. Yes, sir.

Q. And when was that in relation to when the boy cut himself?

A. It was the same day that they brought him back, the next day after he cut himself.

Q. The next day after he cut himself?

A. Yes, sir, he cut himself on the afternoon and the next day is when I talked to Jerry.

Q. Jerry Jones called you?

A. Yes, sir.

Q. What did he say?

A. Well, he said that they was contemplating on bringing him back up to the jail and wanted to know if we had a place to keep him and would take him back.

Q. And what did you tell him—

A. —I told him, yes, sir, if the doctor and they wanted him brought back, well, we'll take him.

Q. And was he then brought back to the jail?

A. Yes, sir.

Q. Was that after you had gone home that day or while you were still there, or do you remember?

A. When they brought him back?

Q. Yes, sir.

[568] A. I was still there. I waited until they did bring him before I went home that day.

Q. And would that have been the day of the 24th, or do you remember?

A. I don't remember the exact date that it was.

Q. And did you make any special preparations to receive this prisoner?

A. Yes, sir.

Q. What did you do?

A. Well, I cleaned the cell out, saw that there was nothing in there that he could possibly hurt himself with, or anything to that effect.

Q. Do you, did you have an ordinary procedure during that time to handle patients that you thought might be dangerous to themselves?

A. Yes, sir.

Q. And you carried out this procedure by stripping the cell?

A. Yes, sir.

Q. And doing what you just do?

A. Yes, sir.

Q. After he came back from the hospital into your jail, and you received him, what did you do then that day?

A. I went home shortly after that; I went home right [569] after that.

Q. And did you go to work the next day?

A. Yes, sir.

Q. At the jail?

A. Yes, sir.

Q. About what time did you get to work?

A. Oh, I always got down there about 5:30.

Q. In the morning?

A. Yes, sir.

Q. Now before you left on the prior day, did you leave any instructions to your jailers?

A. Yes, sir.

Q. And what were they?

A. To check him regular and to keep tabs on him, check him regular.

Q. And was this as a result of Mr. Jones' suggestions?

A. Yes, sir.

Q. And then you came to work the next day about 6:00 in the morning?

A. Yes, sir.

Q. And what did you do then?

A. Well, fed breakfast, and we just went on with the regular jail duties.

Q. Did you ever check on the prisoner yourself?  
[570] A. Oh, yes, sir.

Q. This particular prisoner?

A. Yes, yes, sir.

Q. Did you check on him that morning when you came in?

A. Yes, sir.

Mr. De Anda: Your Honor, this is rather an important matter, and I don't think he should lead the witness. He can ask the witness what he did without leading him.

The Court: All right.

By Mr. Pain:

Q. Did you have the occasion to, you, yourself, make any checks of this prisoner during that day?

A. Yes, sir.

Q. Could you estimate about how many times you may have checked on him?

A. Well, I would estimate I checked on him at least four times during the day.

Q. Do you recall the last time you checked on him?

A. Well, I don't know just what time of the afternoon it was, it wasn't too long before I went home, off of that shift that afternoon.

Q. What time did you ordinarily go home?

[571] A. I would go home between 4:00 and 4:30.

Q. Would it, well, could you approximate the time before you went home that you last saw Reagan Logue?

A. Oh, about an hour before I went home, I guess.

Q. Sometime around 3:00 or 3:30?

A. Somehting like that, yes, sir, I couldn't state positive about that.

Q. Did you talk to the boy?

A. Yes, sir.

Q. Did he seem to be in pretty good spirits?

A. Uh-huh.

Mr. De Anda: Your Honor, that's leading and suggestive, and I ask that Counsel be instructed not to lead the witness.

Mr. Pain: I will rephrase the question.

The Court: I think you had better be a little more careful.

By Mr. Pain:

Q. Did you have, have any impression of his demeanor when you talked to him that last time?

A. No, sir, he was all right.



Q. Did he talk to you very much?

A. No, sir, I didn't talk to him much, I just asked how he was doin', somethin' like that, and he [572] didn't have nothin' to say much.

Mr. Pain: We pass the witness.

### CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. Lowrance, I presume that you made a full report of this to the Sheriff?

A. Yes, sir.

Q. And did you ever make any sort of a written report yourself?

A. No, sir.

Q. Did you ever make any statement to the F.B.I., or anyone else, that you recall?

A. That, I don't recall anybody else.

Q. I know that you're hazy on your times, and I don't blame you for it—

A. —Yes, sir, it's been a long time, hasn't it?

Q. Yes, sir, how old a man are you now, sir?

A. I'm sixty-nine.

Q. Sixty-nine, let's see, that would have made you, again my mathematics—sixty-six, sixty-seven or sixty-six, about the time that this happened?

A. Yes, sir.

Q. And as I have a report here that the Sheriff [573] made, and I presume he made it after talking to you about it—

Mr. Pain: —Do you have another copy?

By Mr. De Anda:

Q. And according to this report, the Sheriff, or the Sheriff's Department made, it says, "From Sheriff Johnnie Mitchell—"

Mr. Pain: —Your Honor, before he proceeds any further, I wonder if I might have a copy of that. I do not have a copy, I have not been furnished with a copy of it.

Mr. De Anda: I will be glad to give you a copy, but this is the only one I have.

The Court: Would you rather identify it?

Mr. De Anda: All right, I'm just going to refresh his memory, I'm not going to offer it into evidence.

The Court: I don't know how you are going to refresh his memory from a report of the Sheriff, the Sheriff's Department.

Mr. De Anda: It is from the Sheriff's Department to Justice of the Peace, Peter Dunne, dated June the 4th, 1968, from Sheriff Johnnie Mitchell. Subject, Reagan Logue, Federal Prisoner. And in here [574] there is a mention made of the time that, that Mr. Lowrance saw the prisoner, and I just wanted to see if that is the last time and if this is correct.

Mr. Pain: Your Honor, I would like to take a look at that.

The Court: I think you are entitled to look at it before you read anything from it.

Mr. De Anda: I will be glad for him to read it; I'll be glad to give him a copy of it, Judge.

(Discussion held off of the record.)

Mr. Pain: Your Honor, I would object to Counsel's using this particular sheet of paper to—may I see it—to refresh any witness' recollection because of the fact that, that he has just read it, read into the record that it is addressed to Justice of the Peace, Peter Dunne, and from Sheriff Johnnie Mitchell, and this is not Johnnie Mitchell upon the witness stand at the present time.

The Court: He has seen it and knows [575] something about it?

Mr. De Anda: Yes, sir, I can use anything to cross examine a witness with; I am not impeaching him with it, but if I want to make any notes, or I can use anything.

The Court: Yes.

Mr. Bowers: Your Honor—

The Court: —You can ask him any question.

Mr. De Anda: Yes, sir.

The Court: Are you proposing to introduce it into evidence?

Mr. De Anda: No, sir, I don't think I could.

The Court: All right, I don't—

Mr. De Anda: —Unless they would agree to it, but I don't think, under the rules of evidence, that I can introduce it in evidence. I was just going to ask him some questions pertaining to the, to see if he would agree, if it was correct, and it might help him to refresh his memory, and if it helps him, all right, and if it doesn't help him, it just wouldn't help him.

Mr. Pain: May I ask him a couple of [576] questions on voir dire first?

Mr. De Anda: Your Honor, it's not a question of voir dire. I'm just going to ask him to refresh his recollection and—

The Court: —Here is the question in my mind about it, if it is something he doesn't know anything about, certainly you can ask him questions about it, I think you can say, "Well, if, if the report says thus and so, is that right, or is it wrong—"

Mr. De Anda: —That's what I was going to do—

The Court: —But while you are doing this, in effect, you are introducing the report in evidence.

Mr. De Anda: Well, I don't—

The Court: —That's the way it seems to me, like whatever you question him about, if you read it into evidence and asked him if that is right, you are

getting it in evidence indirectly where you couldn't get it in otherwise.

Mr. De Anda: Your Honor, let me point this out—the only thing there is, there's [577] one reference to Mr. Lowrance in this report as to the times he saw the prisoner, and I'm simply going to ask him, I am going to read that part to him and ask him if it is his recollection or not.

Mr. Pain: That's all right.

The Court: That's all right.

Mr. De Anda: Is that okay?

The Court: Yes.

Mr. Bowers: Could I suggest this in this matter, so it won't be read, why don't you simply show it to Mr. Lowrance and see if it refreshes his recollection, I think it would be proper to do it that way rather than to read it.

The Court: If he is familiar with it, why—

Mr. De Anda: —He might be familiar with it, I don't know. Let me ask him.

The Court: Ask him.

By Mr. De Anda:

Q. Mr. Lowrance, I want to show you a report which indicates it is from, that this is a copy ob-

viously of a report from, it's on the County of Nueces stationary, Johnnie Mitchell, Sheriff, [578] dated June the 4th, of 1968, and it is from the Sheriff to the Justice of the Peace, Peter Dunne, with reference to Reagan Logue, and I want you, are you familiar at all with the report?

A. No, sir, I never saw it.

Q. All right, but you did talk to Sheriff Mitchell after, after this happened and gave him a report?

A. Yes.

Q. All right, now all I want to ask you is this— is it correct to say that, would you agree with this statement, that on the afternoon of May the 24th, 1968, at approximately 3:00 P.M., subject Logue was talked to by Chief Jailer, Tom Lowrance, is that, do you, does that help you to pin a time down? You indicated earlier that you weren't sure of the time when you talked to this man—

A. —Well, I would say that that is, was in close range of it, but I wouldn't say that it was or wasn't, but I was there about that time, that I talked to him.

Q. Now this report does not indicate that you talked to Reagan at any other time, is that the only time that you talked to him?

[579] A. No, sir, I talked to him several times during the course of the day, in and out, going up there.

Q. You mentioned three or four times?

A. Yes, sir.

Q. All right, now but would this have been the last time?

A. Yes, sir, that was about the last time that I talked to him because I went home shortly after that.

Q. All right, now did you open, when you would

be up in the jail to look at these cells, as I understand it, there is a, of course, there is this mesh wire around this particular cell block, I will call it, this, the isolation cells—

A. —Yes, sir.

Q. And did you go inside the mesh?

A. Oh, yes, sir, every time I went up, I went inside of the mesh.

Q. All right, did you go inside of the cell?

A. No, sir, I never was inside of his cell.

Q. All right, whatever conversation you had, or you said, "How are you doing," as I remember?

A. Yes, sir, something like that.

[580] Q. And you say he did not respond?

A. No, sir, he never said anything.

Q. He never said anything?

A. No, sir.

Q. So whatever conversation it was, you did the talking?

A. That's about all, as far as conversation we had, and it was—

Q. —Yes, sir, I appreciate that, and then anything, any looking you did would have had to have been done through those little holes—

A. —Which I could see, yes, sir, which I could see.

Q. —around this metal sheet, the metal that makes up the cell?

A. Yes, sir.

Q. Now I believe that all there was in the cell was a mattress and a commode without a top on it?

A. That's right.

Q. But filled with water?

A. Yes, sir.

Q. Could you flush the commode?

A. Yes, sir.

Q. And also a basin?

[581] A. Right, right in front of the commode, yes, sir.

Q. And a hydrant or faucet projecting out of the wall?

A. Yes, sir.

Q. Now you have what they call the miscellaneous tank up there, Mr. Lowrance?

A. Yes, sir.

Q. And there were, if the testimony is correct, about twenty people up there in the miscellaneous tank?

A. I couldn't say about how many was in that miscellaneous tank, I wouldn't say.

Q. You just don't know?

A. I don't know. It's been too long.

Q. But there was no people, as I understand it, inside of those isolated cells?

A. No, sir.

Q. Other than the man up there in that one cell and that was Reagan Logue?

A. Yes, sir.

Q. That is correct?

A. That's right, yes, sir.

Q. And this miscellaneous tank that we are talking about has a metal partition, I think it's a metal partition, between it and the isolation [582] block?

A. Yes, sir.

Q. And it is impossible for any prisoner in the miscellaneous block to look inside or to see the people inside of the isolation cells?



A. Yes, sir, that's right.

Q. And particularly the isolation cell that Reagan Logue was in because it was furtherest from the miscellaneous tank.

A. No, sir, it wasn't the furtherest from the miscellaenous tank.

Q. I'm sorry, which one would be further than that one?

A. Well, the one in the back of it.

Q. Oh, the one directly behind it?

A. Yes, sir.

Q. Oh, I see, but there would be several cells between the one that Reagan was in and the miscellaneous tank?

A. No, sir.

Q. All right, maybe I'm not using the right words.

A. Well—

Q. —Let me, all right, let's use this thing again, (indicating blackboard), and the Judge made an inspection of it so maybe he can help [583] me—assuming that these were the isolation cells—

A. —That's right.

Q. —and this is the miscellaneous tank—

A. —Yes, sir—

Q. —that's behind it—

A. Behind it.

Q. Is there any way that anybody in the miscellaneous tank could, from that tank, look into Reagan Logue's cell?

A. No, sir.

Q. There's no way?

A. No, sir.

Q. All right, they couldn't even do it with mirrors?

A. No, sir.

Q. All right, now let me ask this question—you say you talked to Mr. Jones concerning the return of Reagan Logue to jail?

A. Yes, sir.

Q. Now what exactly did Mr. Jones tell you concerning the measures that were to be taken pertaining to Reagan Logue?

A. Well, now the exact words, I couldn't tell you.

Q. I'm asking you for, I am not asking you for the [584] exact words, but just the exact things that he told you about, not his words.

A. Well, he asked me if I had a cell to put him in by himself that was safe and sound—

Q. —All right—

A. —and could take care of him and keep him, and I says, "Yes, sir, I can."

Q. I see, so you found a cell where he could be kept by himself?

A. Yes, sir.

Q. And where you thought it would be safe?

A. Yes, sir.

Q. Considering what you had?

A. Yes, sir.

Q. And did he expressly suggest to you a cell where he could be kept by himself?

A. Yes, sir.

Q. Now let me ask you this, do you, when you have a federal prisoner, do you pretty well let the Marshal decide things that are to be done with that prisoner, when he's going to be removed, when he is put in, and how he is kept?

A. Well, no, sir, without, as the prisoner is put in, there's some special request or somethin' and we know, we will try to do with him like [585] the ordinary prisoner, why, we just keep him.

Q. As a matter of fact, when you first put him in jail, at first, before he cut himself, he just, you just had him in there and were taking care of him just like you take care of anybody else?

A. With the rest of them, yes, sir.

Q. That was because you didn't know that he was getting ready to cut himself?

A. No, sir.

Q. And you were taking care of him the first time the way you just take care of anybody else?

A. Yes, sir.

Q. So you had him in jail with a bunch of folks who were in jail and you had him downstairs, isn't that right, or do you recall?

A. I don't recall just whether he was downstairs or upstairs.

Q. All right, but in any event, as a result of taking the ordinary care for him, why he tried to commit suicide by cutting his arm?

A. Yes, sir.

Q. And he did it with a razor, as I understand, Mr. Lowrance?

A. Yes, sir, a razorblade.

[586] Q. And it was purely all right for him to have the razor because they had razors in there to shave with?

A. Yes, sir.

Q. And so that on the first go-around, why you

didn't pay any more attention to him than you do to anybody else?

A. No, sir, that's right.

Q. Have you ever, as long as you can remember, and being connected with the Nueces County Jail, ever done anything to a federal prisoner without checking with the Marshal, or without the Marshal asking you to do it, insofar as other than just keeping him in jail?

A. That's right.

Q. Would, would any, when any special circumstances arises, or anything happens, like for example, when Reagan cut himself, you folks immediately contact the Marshals?

A. Yes, sir.

Q. To get instructions from him as to what he wants done?

A. That's right.

Q. And the reason you get those instructions is because you would follow them out as far as you [587] could?

A. That's right.

Q. Then I presume you feel like the federal prisoners are the federal prisoners?

A. Why, sure.

Q. And while you have an agreement to keep them for the federal government, how they are handled when special circumstances arises, is a matter for the Federal Marshal?

A. Yes, sir.

Q. And has that been the unwavering policy of the County Jail in dealing with federal prisoners?

A. As far back as I ever went, yes, sir.

Q. Do you recall ever getting into an argument with a Marshal about what was being done to a prisoner or not done to him?

A. No, sir, never have.

Q. In other words, the manner in which you kept federal prisoners was such that either the Marshal agreed with the way you were doing it, or if he wanted anything done differently, you would do what he wanted done as pertains to that particular prisoner?

A. Yes, sir.

Q. The times that you went up and checked on Logue, [588] you mentioned you did it three or four times that day, that was in connection generally with taking something, or some other prisoner up there or something you had to do upstairs?

A. Yes, sir, that's the main reason. I went, just to be honest about it, every time I taken anybody up, up to one of them other tanks, which is just right there, their doors is right there by it, and I could—

Q. —Surely, I appreciate that, and in other words, if you had something to do upstairs like take a prisoner up, or something, you would do that and then you would drop around—

A. —It wouldn't be ten feet from the door where I was, the other tank, and I would see him and say something to him at that time, and like I say, I can't say what time it was, but I was up there four to six times, I wouldn't say just how many, but in the routine day you are up there a lot of times.

Q. In other words, where your jail routine, when you had to go up for some reason, you would go by and see Reagan?

A. Yes, sir.

Q. And your estimate earlier was three or four [589] times, but it could have been as many as six times?

A. That's right, yes, sir, I wouldn't know.

Q. That would be from 5:30 in the morning until—

A. —4:00, 4:30 in the evening.

Q. 4:00 or 4:30 in the afternoon? All right, now how about the other jailers that were there, I believe turnkeys, I believe that's what you call them—

A. —Yes, sir.

Q. How many other people did you have up there?

A. Turnkeys?

Q. Yes, sir.

A. It would be two besides myself.

Q. Two besides yourself?

A. Yes.

Q. Did you give them any specific instructions pertaining to Reagan or did you more or less kinda consider like he was your responsibility?

A. Well, I considered it part of my responsibility, but at the same time their's too, because I told them from the start, and all the time, to check him and watch him all the time.

Q. When they were up there?

A. Yes, sir.

[590] Q. As far as you know, when they went upstairs to take prisoners, or whatever it might be, they were to look in there?

A. Yes, sir.

Q. All right, who were those two men?

A. Well, it was Strait and Paul Barber, and then

I don't recall just which one of them was workin' at that particular day, but Jack Todd.

Q. But there would be three of you in the jail at one time?

A. Yes, sir.

Q. How many prisoners did you have up there in the jail?

A. Well, I don't know the exact number but I can tell you approximately.

Q. That's what I'm looking for.

A. I would run anywhere from eighty-five to a hundred and ten all the time, so I wouldn't know, I wouldn't say. I never, never had less than around eighty-five, and I had up to a hundred and ten there.

Q. That would be both upstairs and—

A. —Yes, upstairs and down, fifth and sixth floor.

Q. And, and I guess you folks stay busy up there?

A. Well, yes, sir, pretty busy.

[591] Q. And about how many prisoners do you have admitted to, to the jail, do you remember how many you had that day?

A. No, sir, I wouldn't, I can't say.

Q. I'm not trying to be unfair with you, I just wondered.

A. No, sir.

Q. Could you give me an estimate of about how many prisoners you had come in and go out that day?

A. Well, I would say from fifteen to twenty, twenty-five maybe, sometimes, you know, it varies, but we average that many every day, might near. Some days a lot more than others.

Q. Are most of the prisoners that come in and out like that, are they kept downstairs?

A. No, sir, we put them wherever we, well, most of them are just misdemeanors, and we keep them downstairs in the bull pen, and most of them that's going to be there a time, they go up to the miscellaneous tank and state tank.

Q. I see, in other words, the upstairs part would be logically, or generally for your prisoners that are going to be there for awhile anyway?

A. Yes, sir.

[592] Q. And the downstairs part is more for, maybe a DWI, or drunk or—

A. —That's right—

Q. —that's going to get bailed out of jail within twenty-four hours?

A. Yes, sir.

Q. And are not going to be around too long?

A. That's right.

Q. And the reason for that is it just saves you climbing up and down those stairs all the time, is that right?

A. That's right.

Q. Okay.

The Court: Mr. De Anda, maybe we ought to take a little recess.

Mr. De Anda: All right, sir.

The Court: Until 11:00 o'clock.

(After a short recess, Court reconvened in the above entitled and numbered cause, all



parties present and presiding as before, and the following proceedings [593] were had, to-wit:)

The Court: You may proceed, Mr. De Anda.

By Mr. De Anda:

Q. Mr. Lowrance, you left the jail at what time, sir?

A. What date?

Q. That day, the day of the hanging.

A. Well, I didn't leave there until about, I'd say 3:00 o'clock.

Q. All right.

A. Between 3:30 and 4:00, I wouldn't say positive.

Q. And, of course, at that time you were unaware that anything had happened or would happen, if it hadn't happened yet?

A. That's right.

Q. You did not, of your own knowledge, know what time Reagan was discovered or what time he was cut down or anything of that kind?

A. No, sir, I wasn't there.

Q. Other than what someone might tell you?

A. That's right.

Q. Did you go back to the jail that day?

A. No, sir, I didn't go back that day.

Q. When was the first that you knew about the [594] occurrence?

A. Well, shortly after it happened, they called me at home from the jail and told me it happened.

Q. All the times that you went up there, I believe you mentioned one time that you tried to talk to the

boy and apparently he was laying down or sitting up, or what do you recall?

A. He was sitting on the bunk, you know, those bunks over on the side.

Q. Those metal bunks?

A. Yes, sir.

Q. They were still in there, too?

A. Yes, sir, they are attached to the wall, you can't—

Q. —You can't remove those?

A. No, sir.

Q. And he was just sitting in there?

A. Yes, sir.

Q. All right, and on that occasion when you talked to him, you, you went inside the mesh?

A. Yes, sir.

Q. And talked to him?

A. Yes, sir.

Q. Of course, you can see him sitting down there, I suppose, if you, if you are pretty close to [595] that screen mesh without going inside?

A. Oh, yes, sir.

Q. On some of the occasions that you were by there, did you just walk by and see him, walk in and see outside of the mesh, and see if he was all right?

A. I just looked, looked in there; you can see from that state tank, when you go up there and open the door to put anybody in and take anybody out, it's like right here's the tank, and here is the cell right here, (indicating with hands), and when you are opening and closing that door, you can just look

from here to the chairs there and just see him in there.

Q. Normally that door stays locked?

A. Yes, sir, it stays locked all the time.

Q. This is a steel wall, too, that—

A. —Yes, sir—

Q. —as I remember your jail?

A. Yes, sir.

Q. But you would open that door, look inside and see him sitting there?

A. Yes, sir.

Q. There wasn't, well, it wasn't necessary for you to unlock it, go around and unlock it?

[596] A. The screen door?

Q. The screen door.

A. No, sir.

Q. The looking you did was just done through the mesh and the holes from the outside?

A. Yes, sir.

Q. There was the one exception when you went in, inside there to talk to him?

A. That's right, that was just before I went home.

Q. I see, what time did you serve the evening meal at the jail?

A. I'd say we started around about 4:30.

Q. 4:30?

A. Uh-huh.

Q. If Reagan Logue's body was discovered hanging about 4:45, would that be about the time?

A. That's about feedin' time.

Q. That's feedin' time?

A. Just about feedin' time.

Q. That would be about the time that a jailer or someone would go up there to feed the prisoners?

A. Yes, sir, the jailer goes with the trustees to feed.

Q. Would Reagan Logue have been fed at the same time as the other prisoners?

[597] A. Yes, yes, sir.

Q. So the reason that he was discovered hanging up there, then, would be probably because they were going to feed him and found him that way?

A. Yes, sir, I would assume so.

Q. To the best of your remembrance, and knowledge, you put Reagan Logue in that cell under the conditions that you did because that is the way you understood the instructions from the Marshal to be?

A. Yes, sir.

Q. And those instructions, just to review things a little bit, were to take out everything that was movable in the, in the cell?

A. Yes, sir.

Q. All objects?

A. Yes, sir.

Q. Leaving in there the commode and the faucet and the wash basin, the metal tank, the metal bunks?

A. Yes, sir.

Q. And the mattress?

A. Yes, sir.

Q. Removing all his clothing except his shorts, if I remember?

A. That's right.

[598] Q. And being certain he was by himself?

A. Yes, sir.

Q. And watching him periodically when you had to be up there, and you were watching him—

A. —Yes, sir—

Q. —you'd go take a look to be sure he was all right?

A. Yes, sir.

Q. Was there any other instructions now that we have had a recess, and we have been sitting and thinking about it, do you recall any other instructions that you might have gotten from the Marshal?

A. No, sir, I don't recall anything.

Q. And you're positive about your testimony, we have gone over it a couple of times and you are telling me—

A. —Yes, sir—

Q. —everything you know as best you remember it?

A. Yes, sir.

Q. And a team of mules wouldn't get you to change your words you have said?

A. No, sir, I don't think I would change it, I don't know nothin' to change it with.

Q. All right, then I'm going to turn you back over [599] to Counsel for the Government.

A. Thank you, sir.

Mr. De Anda: I pass the witness, Your Honor.

### REDIRECT EXAMINATION

By Mr. Pain:

Q. When you last saw Reagan, and you talked to him, you were on the inside of the wire mesh, is that correct?

A. Yes, sir.

Q. And did I understand you correctly to say that you saw him lying on the bunk at that time?

A. He was sittin' on the, on the bunk, he was just sittin'.

Q. Sitting on the bunk?

A. Sittin' on the bottom bunk, it is a double-deck, one of them double-deck bunks, and he was sittin' on the bottom one.

Q. Now you have handled, I'm sure, quite a few federal prisoners in your job before?

A. Yes, sir.

Q. Now they eat the same food as all the other prisoners, don't they?

[600] A. Yes, sir.

Q. And they wear the same clothing?

A. Yes, sir.

Q. And they are subject to the same rules and regulations?

A. Yes, sir.

Q. The same disciplinary measures that you might want to put against a prisoner?

A. Yes, sir.

Q. And subject to the same—

Mr. De Anda: —Your Honor, this is leading again, and, of course, is repetitious also, but he is leading the witness something ferocious.

The Court: I think you are, too, Mr. Pain.

Mr. Pain: All right, sir.

By Mr. Pain:

Q. Now these, these items that Jerry Jones talked to you about in connection with the preparing of the cell for prisoners, for the prisoner, I think Mr. De Anda characterized them as instructions, were they

instructions that you had to follow or perhaps were they merely requests that he made?

A. Well, merely requests, it was just a standard [601] method that we used anyway.

Q. He couldn't tell you how to—

A. —Oh, no.

Mr. De Anda: This is leading and suggestive, and I'm going to object to it.

Mr. Pain: I will rephrase the question. Could he tell you how to—

The Court: —All right—

Mr. Pain: —prepare for that particular prisoner?

The Witness: No, sir, I wouldn't think so.

Mr. Pain: Pass the witness.

Mr. De Anda: Thank you very much, Mr. Lowrance.

The Witness: Thank you, sir.

The Court: You may step down.

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WITNESS EXCUSED

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Mr. Bowers: We will call Frank Reyna to the stand, please.

Mr. Pain: Your Honor, may Mr. Lowrance be [602] excused?

The Court: Mr. Lowrance, you may be excused, you don't have to wait around.

Mr. Lowrance: Thank you.

Mr. Bowers: Sir, have you been sworn?

Mr. Reyna: No.

Mr. Bowers: Face the Clerk and be sworn, please, sir.

(Oath administered to the witness by the Deputy Court Clerk.)

### FRANK REYNA,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

### DIRECT EXAMINATION

By Mr. Bowers:

Q. Please state your name and address and occupation for the record?

A. My name is—

The Court: —You may be seated.



[603] By Mr. Bowers:

Q. You may be seated.

A. Okay, Frank Reyna.

A. Reyna?

A. Reyna, (spelling) R-E-Y-N-A.

Q. What do you for a living, sir?

A. I work for the Sheriff's Department.

Q. All right, sir, what is your home address?

A. 2626 Vaky.

Q. What do you for the Sheriff's Department, Mr. Reyna?

A. I work for the jailer.

Q. All right, sir, were you so employed in May of 1968? Did you work as a jailer in May of 1968, sir?

A. Yes, sir.

Q. In the Nueces County Jail?

A. Yes, sir.

Q. All right, sir, do you remember a prisoner by the name of Reagan Logue?

A. Yes, sir.

Q. All right, sir, now the evidence in this case shows that Mr. Logue was found hanging in the Nueces County Jail about 4:45 on the 25th of May, 1968, do you know who found him, sir?

[604] A. Yes, sir.

Q. Who was that, sir?

A. Myself.

Q. All right, sir, and is your recollection of the time approximately, does it coincide with what I just, have just stated?

A. Repeat the question, sir.

Q. About what time did you find him?

A. About 4:45.

Q. All right, sir, had you seen Reagan Logue earlier on that day?

A. Yes, sir.

Q. About what time, sir?

A. About around 4:30.

Q. Around 4:30, sir? All right, sir, describe what happened when you saw him around 4:30, please.

A. He was layin' down on the top bunk.

Q. All right, sir, why did you go in there?

A. To check him.

Q. All right, sir, all right, sir, had you seen him on other occasions that day?

A. When I came on duty.

Q. About what time was that, sir?

A. About around 2:30.

[605] Q. All right, sir, 2:30 that afternoon?

A. 2:30 or 2:45.

Q. All right, sir, now other than the three times, when you found him after he was found hanging, fifteen minutes before he was found hanging, and when you went on duty, had you seen him any other times that day?

A. Between—

Q. —I'm sorry, sir—

A. —About three times.

Q. I'm sorry, sir, how many?

A. Around two, two and one, I mean two or one.

Q. Were there any other times?

A. The last one, the last time I seen him was around 4:30.

Mr. Bowers: Pass the witness, Your Honor.

## [606] CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. Reyna, after this happened, did you talk to the Sheriff about what occurred?

A. No, sir.

Q. You never talked to the Sheriff?

A. No, sir.

Q. He never asked you about it?

A. No, sir.

Q. Did you talk to anybody about this happening?

A. Nobody.

Q. No one?

A. No one until—

Q. Until when?

A. The day it happened.

Q. Well, all right, let's start with the day it happened, after it happened, who did you talk to about it?

A. To the desk man.

Q. To the desk man?

A. Yes.

Q. And what did you tell the desk man?

A. The way, the way that I seen the man.

Q. Well, didn't you cut him down?

[607] A. No, sir.

Q. Why not?

A. Well, I had no, I don't carry no knife, just my keys.

Q. I beg your pardon?

A. I just have my keys.

Q. Well, let's talk about that a little bit. What were you doing up there when you found him?

A. It was feeding time.

Q. Feeding time?

A. Yes, sir.

Q. Was anyone with you?

A. About, a couple of trustees.

Q. Were they with you when you saw Logue hanging there?

A. I don't recall. It's like I stand between the two sides of the cells.

Q. You were not inside of the wire mesh?

A. Yes, sir.

Q. You were inside of the wire mesh?

A. Yes, sir.

Q. In other words, you had to unlock the wire doors—

A. —Yes, sir—

Q. —and walk back to Logue's cell?

A. Yes, sir.

[608] Q. And you were going to feed him, was that your purpose in being there?

A. Yes, sir.

Q. That is how you happened to find him?

A. Yes, sir.

Q. When, when you found him, were there two trustees with you?

A. Yeah, I had my trustees busy.

Q. I beg your pardon?

A. I had my trustees busy.

Q. Well, you didn't consider that matter of some importance?

A. Yes.

Q. All right, is that why you didn't call them, because they were busy?

A. No, it was they were feeding.

Q. They were feeding?

A. Yes, sir.

Mr. Bowers: Your Honor—

Mr. De Anda: —Frank—

Mr. Bowers: —Pardon me, sir, I think it is obvious from the witness' testimony that English is not his first language and that he is having some difficulty with it.

[609] The Witness: Yes, sir.

Mr. Bowers: And if I could ask the Court to attempt to be sure that the witness understands these questions, I think it is quite critical in this area.

Mr. De Anda: Your Honor, he had no problems on direct, and I don't think he is having any on cross.

The Court: Well, we will go a little bit further.

The Witness: All right.

Mr. Bowers: I'm not objecting to the cross examination; I simply want to call the Court's attention to this particular problem that this witness has, and I think he did have difficulty a few times on direct.

Mr. De Anda: Well, I don't see that we were having any problem at all, of course, that's for the Court, and I don't want to argue about it.

The Court: You may proceed, Mr. De Anda, and we will see how we get along.

By Mr. De Anda:

Q. Mr. Reyna, after you discovered this man hanging [610] there, what, what did you do?

A. I took my trustees downstairs with me.

Q. You took your trustees downstairs?

A. Yes, sir.

Q. And to do that, you had to unlock the door there at the stairway?

A. Yes, sir.

Q. Go downstairs and unlock another door?

A. Yes, sir.

Q. And go through the bull pen area, is that what you call it?

A. Yes, sir.

Q. And then through the door that leads next to the booking desk?

A. The closest door to the booking desk.

Q. The booking desk, and you went through that door?

A. Yes, sir.

Q. And you talked to the people at the desk there?

A. Yes, the one in charge of the desk.

Q. And what did you tell him?

A. Well, that the man, the one was hanging, that's all.

Q. That the man was hanging?

A. Yes, sir.

[611] Q. Then what did you-all do?

A. He takes care of it after that. I don't know who

called, he grabbed, he took the phone, that is all I know.

Q. All right, well, did anybody go back upstairs?

A. I don't remember, sir.

Q. Did you go back upstairs?

A. Right away, no.

Q. Well, how long did you wait before you went back upstairs?

A. I wait for further notice.

Q. Okay, well, when did you get further notice?

A. From the desk man.

Q. All right, now how long did, how long did he wait?

A. Oh, he called downstairs, I don't know.

Q. You mean on the telephone?

A. On the telephone.

Q. Was it five minutes, ten minutes, or twenty minutes, or how long?

A. I don't remember, sir.

Q. Well, were you pretty accurate on your times a moment ago about when you were going by there?

A. Yes, sir.

Q. How is it that you recall those times so, so [612] well, did you keep a record of them anywhere?

A. I got, we started feeding around a quarter to 5:00.

Q. Oh, I understand that.

A. Yes, sir.

Q. But you said you had been by there at 4:30.

A. Yes, sir.

Q. Why do you remember that?

A. Well, I, we receive a prisoner.

Q. All right.

A. And the desk man takes care of it and I went upstairs to check him.

Q. Oh, the prisoner, you mean?

A. No, the prisoner he was bookin'.

Q. All right.

A. I went upstairs especially for that.

Q. For what?

A. To check that Mr. Logue.

Q. To check Reagan Logue?

A. Yes, sir.

Q. Did anybody tell you to go up there and check him?

A. No, sir, because when they came in, they told me to check him pretty close.

Q. All right, so you checked him, you came in around [613] 2:00—

A. —Around 2:30.

Q. 2:30?

A. 2:45, between—

Q. —Between 2:30 and 2:45?

A. Yeah.

Q. And what was the total number of times that you either went up to check Logue or had occasion to go up there and check Logue, the total number, how many, two, three, how many times?

A. When I come in, on the last time I saw him, around 4:30.

Q. All right.

A. And about 4:45 is the last time I see him.

Q. That's three times.

A. Three times.

Q. All right, you checked him when you came in?

A. Yes, sir.



Q. And you checked him at 4:30?

A. Yes, sir.

Q. Then when you were feeding, at feeding time, that was when you found him?

A. Yes, sir.

Q. Those are the three times?

[614] A. Yes, sir, but I check him in between.

Q. How many, how many times total did you check him that you can recall?

A. I don't remember, sir, but—

Q. —Was it more than three times?

A. More than three times?

Q. Can you give me some estimate of the times, four or five times total?

A. I think one more, I believe so, because somebody came in lookin' for a prisoner and I had to bring him down so he could talk to the prisoner, and then take him back.

Q. Well, in other words, you would check him when you had reason to go upstairs, when you had some reason to go upstairs, like you had to get a prisoner out?

A. Yeah, and between.

Q. Then you would go check Logue?

A. Yes, sir.

Q. When you would check Logue, and as I have been up there, there is a wire mesh—

A. —Yes, around—

Q. —around these cells?

A. Yes, sir.

Q. And inside of the wire mesh are the cells?

[615] A. Yes, sir.

Q. Were these metal walls and with holes in them?

A. Yes, sir.

Q. Now when you checked him, would you go up to the wire mesh and look and see inside of the cell, is that how you did it?

A. No, I had to go around, around the door.

Q. Well, I know you had to go around, that's the only way to get over there, but did you go inside of the wire, now I'm not trying to trick you or anything, I'm just trying to find out what you did, okay?

A. Okay.

Q. Did you go inside of the wire mesh to check him and look in the cell, or did you just go around the wire mesh and look through it?

A. Inside.

Q. Huh?

A. Inside.

Q. You went inside?

A. Yes.

Q. Did you ever unlock the door?

A. No, sir.

Q. You never went inside of the cell, you just looked through the little holes?

[616] A. Through the little holes.

Q. All right, and do you, you recall specifically three times that you did this. How do you remember the times that you did it? I can understand the way you remember the time that you did it at 4:45 because you were feeding, but how is it that you recall these other times, I'm just wondering about it?

A. Well, 4:30, I was telling my boys to get ready to feed, for feeding time, and by that time I get up, bring up my trustees.

Q. About 4:30?

A. Around 4:30.

Q. All right.

A. And as soon as I call my trustees, I went upstairs. When the prisoner came in, the desk man take care of the prisoner and I went upstairs.

Q. All right, now you were in charge of the feeding that day?

A. Yes, sir.

Q. And you fed both upstairs and downstairs?

A. Yes, sir.

Q. All right, and do you accompany those trustees all the time—

[617] A. —All the time—

Q. —while you are feeding?

A. All the time.

Q. Okay, do you feed downstairs before you feed upstairs?

A. Yes, sir.

Q. All right, now the food comes out of the kitchen?

A. Yes, sir.

Q. You go back in the kitchen with the trustees to get the food?

A. The trustees wait in the front, in the bull pen.

Q. Then what do you do, have big serving pans or what?

A. Little pans, about that big a square. (Indicating with hands)

Q. They are individual—

A. —Yes, sir—

Q. —servings, sir—

Q. —servings?

A. Yes, sir.

Q. And you hand them out to the prisoners?

A. Yes, sir.

Q. And so you did this downstairs?

A. The trustees.

Q. The trustees did, but you are sitting there watching?

[618] A. I'm watchin' next to the trustees.

Q. All right, how long does it take you to sit there and hand out all of these dishes to the people downstairs?

A. Oh, excuse me, I can't, it depends on how many prisoners we have.

Q. Well, this is a fair enough answer; how many prisoners do you recall having?

A. I don't remember, sir.

Q. About how many would you have? You can check the number, I am sure, I am sure the record will show it, but give me a guess now and we will find out whether you are right or not.

A. Well, I don't, I wouldn't be lying, about around fifteen.

Q. Fifty?

A. Fifteen.

Q. Fifteen?

A. Yes.

Q. Downstairs?

A. Downstairs.

Q. All right, and you feed those fifteen prisoners?

A. Yes, sir.

Q. You just hand them their food?

A. Yes, sir.

[619] Q. You just, all right, then after—did you go inside of the cell block to do this?

A. No, sir.

Q. It's done from the outside?

A. From the outside.

Q. Is there some sort of an opening or a little window?

A. A window.

Q. A window?

A. Yes, sir.

Q. You unlock it?

A. Unlock it.

Q. Then pass the trays in?

A. Pass the trays.

Q. And after you get all the trays passed in, what is that area downstairs, what is that called where those prisoners are down there that you are feeding?

A. Down state.

Q. Down state?

A. Yes, sir.

Q. All right, then you took the trays of food upstairs?

A. Yes, sir.

Q. All right, now when you get upstairs, do you [620] go on the elevator or do you just haul the stuff upstairs?

A. Walk it upstairs.

Q. Walk it upstairs?

A. Yes, sir.

Q. Then did you start feeding the prisoners in the miscellaneous tank?

A. Yes, sir.

Q. How many prisoners did you have in there?

A. Oh, I believe, not very much, about around nine or ten.

Q. Nine or ten, that would be twenty-four total?

A. (No answer)

Q. All right, and then you fed all those, passed the food out?

A. Yes, sir.

Q. Then where did you go?

A. To isolation.

Q. Then you went to isolation?

A. Yes, sir.

Q. And before you started doing all of this feeding, you had gone to, you had been by to see Logue?

A. Yes, sir.

Q. All right, well, when I have been up to the jail [621] to see people, Mr. Reyna, it seems to me like it takes well over an hour, about an hour and fifteen minutes, doesn't it, to feed?

A. To pick up the trays, feed them and pick them up.

Q. Yes, isn't that about what it takes? I know I have sat around downstairs for a long time waiting for you fellows to get through with your work—

A. —Yes, yes, sir.

Q. Well, would you say that after you get through passing all the food out, then do you start going back down and picking up the trays, by that time the fellows downstairs get through eating?

A. No, I go downstairs, I take my meal, and after I get through, I call my trustees.

Q. And you go back and pick up everything?

A. Yes, sir.

Q. I take it this day you didn't do that, or did you?

A. I forgot about it.

Q. You forgot about it?

A. Uh-huh.

Q. All right, so that is what happened before?

[622] A. Yes, sir.

Q. And now let me make one more stab at it, and just give me as honest an answer as you know how, and to the best of your recollection, but about how many times did you actually go by and see Logue from 2:30, or whenever it was that you got in, until you found him hanging?

A. 3:00, 3:30, 4:30, 4:45—

Q. —Beg pardon?

A. About around four times, as I recall.

Q. That's the best? All right, I will accept that. Now let me talk to you a little bit more about what happened afterwards. I believe that you found, you saw Reagan Logue hanging there, and then you left and got the trustees, or they were with you, I believe.

A. Yes, sir.

Q. They were with you?

A. Yes, sir.

Q. All right, they were with you, so the three of you went back downstairs and you reported to the desk?

A. Yes, sir.

Q. And you told the fellow at the desk?

A. Yes, sir.

[623] Q. There is a fellow hanging up there?

A. Yes, sir.

Q. Then he got on the phone?

A. Yes, sir.

Q. And started calling people?

A. Yes, sir.

Q. And did he make any more than one phone call?

A. I don't remember.

Q. All right, then how long did you stay downstairs before you went back upstairs to see about Reagan?

A. When the Sheriff came up.

Q. Oh, nobody went up there until the Sheriff came up?

A. Yes, sir.

Q. Now the Sheriff was at home, as I recall, is that right?

A. The first time I seen him, the first time I seen the Sheriff that evening was when he came up.

Q. All right, didn't they call the Sheriff at home?

A. I don't know, sir.

Q. Well, it would have taken at least twenty minutes or so for the Sheriff to get there, does [624] that sound about right, from his house?

A. Well, I never went up; I wait for the Sheriff.

Q. Anyway, regardless of what time you went up there, it was not until the Sheriff came up?

A. Yes, sir.

Q. And nobody else went up there?

A. No, sir.

Mr. Bowers: Your Honor, may I ask the witness one brief question on voir dire about the person, where the Sheriff was? Do you know of your own knowledge where he was, Mr. Reyna?



The Witness: No, sir.

Mr. Bowers: So you, anything that you found out, that's not, now it's Sheriff Mitchell I'm talking about, so you have no, you do not know that by your own knowledge, then?

The Witness: That's right, sir.

Mr. Bowers: All right, I think we have to object to any answers that the witness would give on the basis that it would be hearsay.

Mr. De Anda: Answer to what?

Mr. Bowers: As to where Johnnie Mitchell [625] was when the phone call was made, whether he was at home or wherever. He said on voir dire he didn't know, therefore, he could not be testifying from his own knowledge.

Mr. De Anda: Oh, all right.

Mr. Bowers: And may we have that portion stricken where he refers to the Sheriff?

Mr. De Anda: I, I clarified it by my subsequent question.

The Court: I thought it had been because Mr. De Anda's last question was, well, in any event you didn't go back up until the Sheriff got there.

Mr. De Anda: That is all I was trying to establish.

The Court: He was downstairs, so I think it has been.

Mr. Bowers: All right.

By Mr. De Anda:

Q. Whenever the Sheriff got there, Mr. Reyna, you went back upstairs?

A. Yes, sir.

Q. With him?

A. Yes, sir.

[626] Q. And then how was Reagan Logue removed from his position where he was hanging?

A. I believe the men cut the string.

Q. Did you—now let me see your actions now, when you got up to the cell you opened the door, I presume, to feed him?

A. No, sir, we had the little windows under the door.

Q. On the isolation cell there is—

A. —Yes—

Q. —Well, I'll be darned, I missed that when I was up there. There is a little place where you can feed the man in isolation without opening the door?

A. Yes, sir.

Q. And so when you looked through the aperture there, you saw him hanging there?

A. Yes, sir.

Q. You never did go in the cell?

A. No, sir.

Q. So you couldn't tell whether he was alive or dead?

A. It was, he had changed colors.

Q. You could tell there was some color change?

A. Like white.

[627] Q. He was sorta white?

A. Yes, sir.

Q. Was there anything else about him that—

A. —That's all.

Q. All right, well, other than what you could see through those little holes—

A. —Yes, sir—

Q. —you saw him and you, you didn't sit around there—

A. —No, sir—

Q. —and watch, you knew—

A. —No, I don't give it a chance for the trustees to see.

Q. All right, and they didn't even see it at all?

A. I don't believe they had a chance.

Q. Oh, I see, so then you left and you can't tell whether he was alive or dead at that point?

A. Other than he was a little white.

Q. He was a little white?

A. Yes, sir.

Q. All right, and you went downstairs—I don't think we need go over this, but let me ask you one more question, you have given an awful lot of thought to the number of times you went up there, okay?

[628] A. Okay.

Q. And you have told me that four times is the number of times you remember going up there, including the time that you found him hanging?

A. Yes, sir.

Q. Now I know that this has been a long time—

A. —Yes, sir—

Q. —but you are as positive as you can be about that number?

A. I mean it might be more, that's why I make it four.

Q. But four is the most logical number, and the more probable number, is that right?

A. That's right.

Q. All right, and I guess I could jerk, jerk you around a little bit here talking to you and make you say three, or make you say five, but really four is what you recall?

A. I will say, yes.

Q. All right, when you went up there, did you ever go up there with anyone other than the trustees?

A. I go by myself.

Q. All right, were you, was Mr. Lowrance still on duty when you got there, or had he already [629] left that day?

A. I don't remember because sometimes he stays late, and sometimes he goes.

Q. You don't have any recollection about that day?

A. No, sir.

Q. Who was it that, who was it that told you to keep an eye on Reagan?

A. The desk man.

Q. The desk man?

A. The desk man.

Q. It wasn't Mr. Lowrance?

A. Well, when I came in at 2:30.

Q. When you came in at 2:30, what?

A. He told me about him, too.

Q. Mr. Lowrance told you?

A. Mr. Lowrance.

Q. Is that what he told you, to keep an eye out on him?

A. Yes, sir.

Q. Did he give you any other instructions at all pertaining to Mr. Logue, Reagan Logue?

A. No, sir.

Q. All right, to your knowledge did anybody else go up there during the time you were on duty besides yourself?

[630] A. I don't remember, sir.

Q. Would anybody else have any reason to go upstairs?

A. Nobody else, just the desk man and myself.

Q. Who is the desk man?

A. I'm not too sure, I think Paul Barber or Jack Todd, I don't remember.

Q. Mr. Barber, I think he was on duty that day, about that time, I think that the record is going to show that he would have been the one that was on the desk.

A. Yes, sir.

Q. Is his primary duty to be on the desk, is that his main job?

A. The desk and look around.

Q. But for the bookings and this sort of thing, he is the one that handles that or handled it that day?

A. The matron.

Q. He and the matron?

A. The matron handles it.

Q. I didn't, I'm sorry, I missed your answer.

A. The matron makes the bookings.

Q. She makes the bookings?

A. Yes.

Q. And Barber does not make the bookings?

[631] A. No, sir.

Q. All right, he is just down there at the desk?

A. Yeah, he would be the fellow there when peoples come in that opens the door and unlocks it.

Q. When he is on duty, he is the fellow on the desk?

A. Yeah, he can do this, when anyone comes in, he locks it and unlocks it.

Q. I beg your pardon?

A. Yes, sir, he is about, we both, we do the same job.

Q. You and he?

A. Yes, sir.

Q. All right, let's get just one thing straight here, Mr. Reyna, if I might—as I understand it, there are three of you in jail—

A. —Yes—

Q. —at any one shift, and there is one of you that generally stays at the desk?

A. Yes, sir.

Q. And then there is somebody that is generally standing up there next to the entrance to the jail when I go up there and come out of the elevator, there is usually a fellow, nine times out of a hundred, standing right inside there [632] with a key to that door, and I hand him a slip.

A. Yes, sir.

Q. And he unlocks the door and lets me in.

A. Yes, sir.

Q. Now is that one of the three men we're talking about?

A. (No answer)

Q. That would be one of the people on the jail shift?

A. Yes, sir.

Q. And that man's position generally is there by the door?

A. Yes, sir.

Q. And I say that because no matter what time I have gone up there, when I used to go up there occasionally, there would be this fellow, and this fellow would be Mr. Todd or somebody.

A. Yeah.

Q. And then there is one person that generally stands generally inside the booking area, inside there where the telephone is, and all of your papers are.

A. Yes, sir.

Q. All right, now where does the third man stay, does he stay inside of the cell block, I don't mean inside there with the prisoners, but does [633] he stay inside of what we call the bull pen?

A. Repeat the question, sir.

Q. Well, I have pinned down where two of the people stay generally.

A. Yes, sir.

Q. One at the desk?

A. Yes, sir.

Q. And one next to the entrance door?

A. Yes, sir.

Q. To the jail, now where does the third fellow stay generally?

A. Third, the third man is going to be the turnkey.

Q. Yes, the turnkey, all right.

A. Yes.

Q. Would that be you?

A. Yes, sir.

Q. Where do you generally stay?

A. There in the front or—

Q. —Downstairs, in the downstairs part of the jail?

A. In the front office.

Q. In the front office?

A. Yes, sir.

Q. In other words, there is a rule that there are no jail personnel, and by that I mean Deputies, [634] or jailers, or turnkeys—

A. —Yes, sir—

Q. —inside the areas where the prisoners stay or inside the bull pen, there is usually not anybody in there unless you have some specific reason—

A. —Yes, sir—

Q. —for being in there?

A. Yes, sir.

Q. Now at night, at night, as I understand, you do have to go upstairs simply for the purpose of checking the prisoners?

A. Yes, sir.

Q. And you do that, is it every hour?

A. Every hour.

Q. Every hour at night?

A. Yes, sir.

Q. And to be sure you do it, they have some time clocks up there that you have to punch?

A. Yes, sir.

Q. And you, you open those time clocks with a key?

A. Yes, sir.

Q. Or work it with a key?

A. Work it with a key.



Q. Insert the key and it punches the time that [635] you checked?

A. Yes, sir.

Q. Now that keeps the record?

A. Yes, sir.

Q. So that the times that, that the jail was checked, that the jailer went upstairs to check the second floor—

A. —Yes, sir—

Q. —there would be a record of that on the jail time sheets?

A. Yes, sir.

Q. At least for night time?

A. The one that was on that duty around 10:30; after that it, it is another jailer.

Q. I understand that.

A. Yeah.

Q. When do these time checks start?

A. Around 8:00.

Q. About 8:00 o'clock?

A. Yes, sir.

Q. And they go on through to when?

A. To around 5:00 o'clock in the morning.

Q. All right, so we would have a record in that jail of the times that the jail was checked upstairs on May the 24th at night?

[636] A. Yes, sir.

Q. I wonder if you would be so kind, Mr. Reyna—well, that's all right, I will get somebody on it. Now during the day, do you keep any kind of a record, or were you told to keep any kind of a record with reference to the number of times that you checked Reagan Logue?

A. No, sir.

Q. Did you write down anything?

A. No, sir.

Q. Nobody told you to do that?

A. No, sir.

Q. The only instructions that you got pertaining to Reagan Logue—

A. —Yes, sir—

Q. —as best you remember it, Mr. Reyna, was to keep an eye on him?

A. Yes, sir.

Q. That's the only thing that was told to you?

A. Yes, sir.

Q. You're positive of that?

A. Yes, sir.

Q. Can you think, I'm going to give you a little time to think about it, can you think of anything else that you might have been told about [637] Reagan Logue, or watching him, or anything of the kind, other than what you just said?

A. No, sir, just to keep watchin' pretty close.

Q. Watch him pretty close?

A. Uh-huh.

Q. When you were given these instructions, was Mr. Barber also given the same instructions?

A. Yes, sir.

Q. He was present, too?

A. Yes, sir.

Q. Did he come on duty when you did?

A. Yes, sir, well, the desk man.

Q. Yes, sir, assuming he was on it?

A. Yes, sir.

Q. On duty?

A. Yes, sir.

Q. In other words, when you-all came in, both of you came in and Mr. Lowrance told you, "Watch him pretty close"?

A. Yes, sir.

Q. That was all that was said?

A. That's all.

Q. And so in accordance with those instructions, obeying those instructions, from 2:45 or whenever it was you went up to see him—

[638] A. —Yes, sir—

Q. —you saw him a total of four times to 4:45 when—

A. —Yes, sir—

Q. —when you found him hanging?

A. Yes, sir.

Q. Now you didn't report to anybody when you were going to make these trips? "I just went up and saw Reagan Logue and he is okay," you didn't say anything like that to anybody, did you have to say anything like that to anybody?

A. No, sir.

Q. Okay, and he went, if you went up there it was because you were doing something, or specifically for that purpose, but you didn't tell anybody about it or anything?

A. Yes, sir.

Q. If anybody else went up there, you don't know about it?

A. I don't know about it.

Q. Or the times that they went up there?

A. No, sir.

Q. All right, let me ask you one thing—other than

the time that you saw him before you found him hanging, Mr. Reyna, what was he doing?

[639] A. He was—around 4:30?

Q. Whenever it was.

A. The last time I see him, before I fed him, he was laying down on the top bunk.

Q. He was laying on the top bunk?

A. Yes, sir.

Q. You didn't say anything to him?

A. No, sir.

Q. Did you ever say anything to him?

A. No, sir.

Q. Did you ever try to say anything to him?

A. No, sir.

Q. Did he ever try to say anything to you?

A. No, sir.

Q. Did you ever hear him say anything?

A. No, sir, he was just laying down on the top bunk.

Q. And he was laying on the top bunk?

A. Yes, sir.

Q. They are what, three bunks?

A. Two.

Q. Two bunks, and there is a tier, one on top of the other?

A. One on top of the other.

Q. Now the time before that, that you saw him, you [640] say you saw him four times, so that is two times, when he was hanging and when he was on the top bunk, now the time before that, that you saw him, what was he doing?

A. He was standing between the cell.

Q. Just standing there?

A. Between the cell, in the middle.

Q. You mean, I'm sorry, you lost me now.

Mr. Bowers: I think we're getting into a language problem there, I don't think he understands.

Mr. De Anda: There is not any language problem at all; we are asking the questions and the Government doesn't like the answers, but Judge, he answered the question, he answered my—

Mr. Bowers: —It is not a question of knowing, it's a question of—

The Court: —I don't think he understood what you asked him. It's obvious that you've got him confused right now, so see if you can straighten it out.

Mr. De Anda: All right, I'm going to try and straighten him out, Judge.

By Mr. De Anda:

[641] Q. Mr. Reyna, I am confused by your answer—

A. —Yes, sir—

Q. —and if any of the questions I ask you, if you don't understand them, you call it to my attention.

A. All right, sir.

Q. And anything you are trying to say, that you might better say in Spanish, if you have problems, you let me know. I understand Spanish, you know that.

A. Okay.

Q. But now let's get back—the last time you saw him, of course, he was hanging?

A. Yes, sir.

Q. And the time before that he was on the top bunk?

A. The top bunk.

Q. Asleep?

A. Yes, sir.

Q. And the time before that, that you saw him, you saw him four times?

A. Yes, sir.

Q. Now this is the third time, going backwards, okay?

A. Uh-huh.

Q. You say he was standing up?

[642] A. Yes, standing up inside.

Q. Inside of his cell?

A. Yeah.

Q. He wasn't outside the cell?

A. No, sir.

Q. In other words, the door to his cell, the metal door, the iron door to his cell was locked, wasn't it?

A. Yes, sir.

Q. All right, in other words, for him to have gotten out of his cell, would he have had to go through the metal door?

A. Yes, sir.

Q. And he would have had to go through the mesh, the wire mesh door?

A. That's right.

Q. All right, so he was standing in there?

A. Yes, sir.

Q. How about the first time you saw him, what was he doing, do you remember?

A. I don't remember.

Q. Did you ever hear any noise coming from the cell or anything like that?

A. No, sir.

Q. It was always very quiet in there?

[643] A. Yes, sir.

Q. Were you in a position to see the bandage on his arm any time, or do you remember a bandage on his arm?

A. Yes, sir.

Q. Of course, we know that is what he hung himself with?

A. Yes, sir.

Q. Did he have the bandage on his arm the first time you saw him, do you remember seeing it?

A. Yes, sir.

Q. When you went up, up there at 2:30 or 2:45?

A. Yes, sir.

Q. And then, although you don't remember how he was positioned, you remember seeing the bandage?

A. I know he had it on the arm.

Q. Well, do you remember him having, you don't know where the bandage was?

A. No, no, sir.

Q. In other words, you remember he used the bandage to hang himself, but you don't recall what part of his body the bandage was used for?

A. Right here. (Indicating)

Q. For the arm?

A. Yes, but I don't know which arm.

[644] Q. You don't recall which one?

A. No, sir.

Q. All right, do you remember seeing the bandage when you saw him standing in his cell, whether or not he had a bandage on him?

A. I don't remember.

Q. You don't remember seeing the bandage then?

A. No, sir.

Q. Could you see the bandage at the time that you saw him laying in the bunk, was he laying—

A. —Yes, sir—

Q. —laying such a way that you could see it?

A. Yes, sir.

Q. You do recall seeing the bandage then?

A. Yes, sir.

Q. All right, I haven't tried to confuse you, Mr. Reyna, or mix you up. Is there anything, any question that I asked you, so far as you can tell me, that you didn't completely understand?

A. It's pretty good so far.

Q. Okay, all right.

Mr. De Anda: I pass the witness, Your Honor.

Mr. Bowers: Just a couple of questions, Mr. Reyna.

[645] REDIRECT EXAMINATION

By Mr. Bowers:

Q. When you discovered Reagan Logue in the cell hanging there—

A. —Yes, sir—

Q. —was he moving at all?



A. No, sir.

Q. All right, sir, what was your belief at that time as to whether he was dead or alive?

Mr. De Anda: Your Honor, I object to that as being a conclusion on the part of the witness. The witness has stated the facts surrounding the discovery, and the fact, number one, that the fellow was a little bit light, and number two, that he was hanging still, and as far as his conclusion or opinion as to whether or not the man was living or dead at that time, I don't believe that he would be qualified to, to answer the question.

Mr. Bowers: Counsel—

The Court: —I think he could give what he thought—

Mr. Bowers: —Yes, sir.

[646] The Court: — at the time, I think it might have some relationship to what he did afterward. I think he can say what he thought. It doesn't mean that that is, it is a fact, but I think—

Mr. De Anda: —You are not admitting it for that purpose?

The Court: No, I'm not admitting it as proof of whether he was or not.

Mr. Bowers: It's not intended for that.

By Mr. Bowers:

Q. What is, what is your belief, your personal belief at that time, at the time you left the area, as to whether Reagan Logue was dead or alive?

A. I don't see it move. All I could think is the fellow was a dead man.

Mr. De Anda: I don't think even the Court Reporter understands your answer.

By Mr. Bowers:

Q. Let's just strike the question and I will just simply ask it again, sir. What was your belief, that is, what did you think in your own mind at that time as to whether Reagan Logue was dead [647] or alive?

Mr. De Anda: Your Honor, if he had a belief, that's a leading question and I think it presupposes, presupposes—

The Court: —You're right.

By Mr. Bowers:

Q. All right, sir, what was, what was your thoughts about Reagan Logue's condition as to the existence of his life at the time you left the isolation cell area?

A. Do you want to repeat the question, sir?

Q. All right, sir, did you think he was dead or did you think he was alive at the time you left, you left the isolation cell area?

A. By, by that time, my mind went blank.

Q. You had no thought on it?

A. No thoughts.

Q. Were you frightened at that time?

A. Yes, sir.

Q. All right, sir.

Mr. Bowers: I have no further questions.

Mr. De Anda: Thank you, Frank, I don't have anything else. As far as I'm concerned, you can go.

Mr. Bowers: We will agree that this [648] witness may be excused.

The Court: All right, you may be excused.

Mr. Bowers: Thank you very much, sir.

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WITNESS EXCUSED

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The Court: Okay, we will recess until 2:00 o'clock.  
(And thereafter at 2:00 o'clock P.M., Court reconvened in the above entitled and numbered cause, all parties present and presiding as before and the following proceedings were had, to-wit:)

Mr. Bowers: Mr. Paul Barber will be our next witness, Your Honor.

The Court: All right.

Mr. Bowers: Stand there at the Clerk's desk, Mr. Barber, and be sworn, please, sir.

[649] (Oath administered to the witness  
by the Deputy Court Clerk.)

PAUL BARBER,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

#### DIRECT EXAMINATION

By Mr. Bowers:

Q. Will you state your name, please, name, address, and occupation for the record, sir?

A. Paul Barber. I live at 1591 Hampshire, Corpus Christi. I am a Deputy Sheriff of Nueces County.

Q. What is your duty in the Sheriff's Department, Mr. Barber?

A. Well, I am one of the jailers.

Q. How long have you been so employed, as a jailer?

A. Oh, about nineteen, twenty years.

Q. Okay, sir, now calling your attention to May the 25th, 1968, were you on duty at the jail that day?

A. Yes, sir, I went on at 2:30.

[650] Q. All right, sir, when did your shift run, from 2:30 to what?

A. 2:30 until 10:30.

Q. 2:30 to 10:30, sir?

A. Yes, sir.

Q. At that time, do you recall a prisoner by the name of Logue?

A. Yes, sir, I do.

Q. All right, sir, now where was Mr. Logue located in the jail at that time?

A. He was up on the sixth floor in isolation.

Q. All right, now on that day, sir, what were your duties in and around the jail?

A. Well, when I came in the Chief Jailer told me about having this boy up there in isolation and to keep pretty close watch on him.

Q. All right, sir, now from 2:30 on, can you tell us whether or not you did anything toward observing the Logue boy?

A. Well, probably around 3:00 o'clock, I checked my jail downstairs and upstairs, and I also checked the block where Mr. Logue was and talked to him.

Q. All right, sir, do you recall that conversation with the Logue boy?

[651] A. Well, I asked him how he was feeling and he says, "Pretty good."

Q. All right, sir, did he say anything else at that time?

A. Well, not particularly. I asked him if there was anything I could do for him or get for him, and he says, "No, sir."

Q. Okay, what did you do after that?

A. Well, I went on and checked what we call the upstate tank, and then I went back downstairs to my office.

Q. All right, sir, did you see the Logue boy again that afternoon?

A. Well, I did, yes, sir, around, oh, approximately a quarter to 5:00.

Q. All right, sir, and that was the occasion when he was removed from the cell, is that correct?

A. Yes, sir.

Mr. Bowers: Pass the witness, Your Honor.

[652] CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. Barber, did you ascertain, did you find out about Reagan's hanging from Mr. Reyna?

A. I did, sir.

Q. And now as I recall the testimony, Reyna came downstairs from the upstairs part of the jail—

A. —Yes, sir—

Q. —and advised you that, I presume, that Reagan Logue was hanging in his cell?

A. Right, sir.

Q. And you then made some phone calls?

A. Yes, sir, I called the Sheriff and Judge Dunne.

Q. All right, now did, where did you call the Sheriff?

A. Downstairs.

Q. I'm sorry.

A. In his office.

Q. In his office?

A. Yes, sir.

Q. The Sheriff was not at home at the time?

A. No, sir.

Q. All right, then the Sheriff came on up from his office?

[653] A. Right.

Q. Sheriff Mitchell has been ill and hurt for a long time, if I recall correctly, a considerably long time, was he hurt then?

A. Well, he was getting around very well then at that time.

Q. Was he using a cane?

A. No, sir.

Q. Back then?

A. No, sir.

Q. Then as you recall, you called him at his office and waited for him there at the jail office, for him to come on upstairs?

A. Right.

Q. His office is located on the—

A. —First floor.

Q. The first floor, or what I would call the basement of the courthouse?

A. Well, yes, sir.

Q. And the jail, the jail office is on the fifth floor?

A. Right.

Q. And he would have to walk from his office to the elevator and then come up the elevator to the fifth floor and get off and go on into the jail?

[654] A. Yes, sir.

Q. During the interim, from the time you called him until he arrived, did anyone go upstairs for the purpose of seeing Reagan Logue?

A. Well, to my knowledge, I don't know, sir.

Q. All right, if the Sheriff stated that he was at home when you called him, and drove from his

house to the, to the County Courthouse, would that be an erroneous statement?

A. He wasn't at home.

Q. All right, did you make any memorandum or written statement to anyone pertaining to this, Mr. Barber?

A. Well, I think there was a statement or something made about it. I don't remember at this time what it was.

Q. Do you recall who made the statement to?

A. (No answer)

Q. Let me show you a statement because it is unsigned and perhaps you can solve something for me. (Showing instrument to witness) Is this the same one we were talking about earlier, do you ever recall seeing that instrument, Mr. Barber, it's supposedly, and we referred to it before, and for the record I will again explain [655] that we are talking about a report dated June the 4th, 1968, on the Sheriff's letterhead from, to Judge, the Justice of the Peace, Peter Dunne, and from the Sheriff, Johnnie Mitchell, the subject, Reagan Logue, Federal prisoner.

A. No, sir, I haven't seen this before.

Q. You didn't have anything to do with preparing this report?

A. No, sir.

Q. Well, let me ask you if you would know who did have anything to do with preparing this report?

A. Well, I'd say, to my knowledge I wouldn't know who did it.

Q. Who would normally make reports of this type, whatever the occasion might be, that would make a report to the Justice of the Peace when someone dies in jail?



A. Well, I imagine it was made downstairs in the main office.

Q. I see, you say that afternoon, and I'm talking about the afternoon of the death, when you came on that you were told to keep an eye on, on Reagan Logue?

A. Yes, sir.

[656] Q. And in compliance with that request, or instruction, whatever you want to call it, you went by there at 3:00 o'clock to look at him and you talked to him briefly?

A. Yes, sir.

Q. Did you receive any other kind of instructions pertaining to Reagan Logue at all that you remember?

A. No, sir, because I had been off a day, so in fact, I wasn't there when they brought him in from the hospital. I hadn't come on duty yet.

Q. Yes, sir, well, then, this is the only instructions you ever received?

A. That's right.

Q. And the only time you ever received any instructions?

A. On this particular subject, yes, sir.

Q. On this particular prisoner?

A. Yes, sir.

Q. All right, well, let me—then had you worked the day before, Mr. Barber?

A. Well—

Q. —If you will, well, if it will help you any, I believe this was a Saturday, a Saturday.

Mr. Bowers: Saturday.

[657] By Mr. De Anda:

Q. A Saturday.

A. Well, I don't recall just what days I had off because we changed shifts up there and the days off changed.

Q. This was on May the 25th, Saturday, May the 25th, do you, because of your long tenure, have any special consideration up there as to days off or anything?

A. Beg pardon?

Q. Strike that—well, let me approach it this way. What days, what days do you have off now?

A. The days I have off now?

Q. Yes, sir.

A. On, on Wednesday and Thursday.

Q. Wednesday and Thursday?

A. Uh-huh.

Q. How long have you had Wednesdays and Thursdays off?

A. Well, the way we are running up there on the shift work, it runs for thirty days.

Q. I see, well, do you have any way, independent of checking the records at the courthouse, at the jail, to know whether or not you worked on Friday, May the 24th?

[658] A. Sure I can.

Q. You did work that day?

A. I say I can check and see if I worked.

Q. Oh, I'm sorry, you can check?

A. I can't say just off-hand.

Q. Whether you worked or didn't work, the only instructions you were, you ever got, were May the

25th, the day of the hanging, at 2:00 o'clock, or 2:30 when you came on?

A. That is correct, sir.

Q. If I remember right, the only instructions you received was just to keep an eye on Reagan, a close eye on Reagan, I believe that was the words you used?

A. They told me what he had done, and I wasn't there when it happened.

Q. Yes, sir.

A. And that's the reason why they talked to me to keep an eye on him.

Q. In compliance with that order, you went up there at 3:00 o'clock and looked at him?

A. That's right, sir.

Q. And talked to him briefly?

A. That's right, sir.

Q. How long do you estimate that it was, Mr. Barber, [659] that—well, strike that question and let me ask this question first. Did you, you called the Sheriff, did you call anyone else?

A. Judge Dunne.

Q. Who else did you call?

A. Well, now I don't recall whether I called the Chief Deputy or not, but those are the two men that I did call. I called them because I wanted them up there as quickly as possible.

Q. The Sheriff and who else?

A. Judge Dunne.

Q. Judge Dunne?

A. Yes, sir.

Q. And Judge Dunne, I presume, was in his office?

A. Yes, sir.

Q. And he came on up there, too?

A. Right.

Q. Did everybody go up together to see Reagan, from downstairs up to where Reagan was?

A. Yes, sir, yes, sir.

Q. Do you recall whether Sheriff, whether Judge Dunne, who for the record is now deceased, also, Dunne is dead?

A. Yes, sir, he is deceased.

Q. All right, do you recall whether Judge Dunne [660] got there before the Sheriff, the Sheriff or, or did the Sheriff get there before the Judge?

A. Well, my recollection is that they got there about the same time.

Q. All right, and about how long was it before they got there, Mr. Barber, the best you remember?

A. Well, sir, I'll tell you that in a case like that, the time seemed like it was longer than it really is, but I'd say approximately ten or fifteen minutes.

Q. All right, your best, your best estimate would be about ten or fifteen minutes?

A. Yes, sir.

Q. And there might be a little variation even from that, but that is your best estimate?

A. Well, that's what I would judge it was, somewhere in there.

Q. All right, so you called the Sheriff and the Justice of the Peace, and perhaps the Chief Jailer, that would be Mr. Lowrance?

A. I mean the Chief Deputy.

Q. Oh, the Chief Deputy, I'm sorry, maybe I, maybe I made the mistake.

A. If I did say Chief Jailer, I meant the Chief Deputy at the time.

[661] Q. I think you probably said that, Mr. Barber. Well, anyway, after this ten or fifteen minutes interval, everybody gathered and you marched on up to the second floor of the jail?

A. The sixth floor.

Q. Well, the second floor—

A. —The second floor from the jail office, yes, sir.

Q. We've been referring to it that way, so I just thought I would do so, so it won't get too confused.

A. Yes, sir, right.

Q. And you proceeded to this cell where Reagan was?

A. Yes, sir.

Q. You-all went on in there, and who cut him down?

A. I did.

Q. You cut him down?

A. Yes, sir.

Q. Who checked to see if he was still alive?

A. Well, the Sheriff and Judge Dunne checked him.

Q. I see.

A. And gave me orders to cut him down.

Q. And as near as you can recall, was Reagan Logue discolored or did he have any discoloration?

A. Sir?

[662] Q. What was his complexion or color when you walked in the cell?

A. Well, he had a, kinda a darkish color.

Q. All right.

A. As well as I can recollect.

Q. Did you feel of his body?

A. Sir?

Q. Did you feel of his body?

A. I did.

Q. Was it cold or warm or normal?

A. It was getting cold.

Q. Getting cold?

A. You could tell it was, wasn't warm particularly, you could tell he was beginning to get a little cool.

Q. Will you be on duty this evening, Mr. Barber?

A. I will be on duty tonight. I work graveyards.

Q. What time do you go on?

A. 10:30.

Q. Who would be on duty this evening?

A. Well, the Chief Jailer is on duty at the present time.

Q. I see.

A. And he will be there until he is relieved, his relief may get there at 4:00 or 5:00 o'clock. [663] Now I couldn't say just what time.

Q. If you had been on duty on May the 24th, that was the day before, or the evening before this, you don't recall receiving any particular kind of instructions pertaining to Reagan that day?

A. I did not.

Q. All right, you did not receive any?

A. No, sir, I sure didn't.

Q. And consequently you would, you would have made no effort to check him particularly on May the 24th, although nothing happened that day?

A. No, sir.

Q. You would have made no effort to check him particularly because you didn't receive any instructions, is that correct?

Mr. Bowers: I think Counsel's question is assuming something is in evidence that is not in evidence. I don't think there is any need nor a duty—

The Court: —I think that's right—

Mr. De Anda: —This is all predicated, I intend to check the Sheriff's records to see if he was on duty, and I just don't want to have to call him back. I don't [664] think he will testify any differently regardless of what the records show, and if the records show he was not on duty, I have only wasted about a couple of minutes of time.

The Court: Well, as long as you are going to try to check it, connect it up, that's all right, of course—

Mr. De Anda: —It's just so I won't have to call him back, Judge, if that is permissible.

The Court: Yes, sir.

Mr. De Anda: Thank you.

By Mr. De Anda:

Q. I recognize from what you are, you have told us, Mr. Barber, that you are not at all certain that you worked the evening before, and I don't want to intimate that you did. What I am saying is, because you don't remember, what I am saying is, though, if you did, you made no particular effort on that evening because you had received no instructions pertaining to Reagan Logue?

A. Well, I check the jail every day, sir.

Q. Well, other than your normal, your usual checks of the jail, and I am not trying to say you did [665] not check the jail, what I am trying to ascertain is that you would have made no effort other than your usual efforts as required by your duties to, to check the prisoners. I understand that at night you have somebody that has to check them every hour, for example—

A. —Yes, sir, and they are pretty well checked in the daytime, too.

Q. All right, what I am saying, though, you would not have taken any special precautions with reference to Reagan Logue the evening before?

A. Well—

Q. —Because you had no instructions?

A. No, sir, I didn't even know the man was there the evening before.

Q. All right, sir, thank you very much, Mr. Barber.

Mr. Bowers: We have no questions, Your Honor.

The Court: You may step down, please, Mr. Barber.

Mr. De Anda: Might we ask and impose upon Mr. Barber further, to the extent, that if he will, to get someone at the jail to check the records, whatever records are appropriate, and have them available [666] for us when, after 5:00 o'clock today, because I know everybody goes home down there, and we may need them early tomorrow morning, and it will just save us some time, if you could call someone down there and explain what we need, Mr. Barber. Now what those records are, I don't know, but I would appreciate it very kindly.



The Witness: What you want to know is whether I was on duty the day before?

Mr. De Anda: Yes, sir.

The Witness: Is that correct?

Mr. De Anda: And also Mr. Reyna, if you don't mind. Would you do that?

The Witness: Sure will.

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WITNESS EXCUSED

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Mr. Pain: We will call W. E. Strait.

(Oath administered to the witness by the Deputy Court Clerk.)

[667]

W. E. STRAIT,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. Pain:

Q. Will you state your name, please, sir?

A. W. E. Strait.

Q. How are you employed, Mr. Strait?

A. Deputy Sheriff of Nueces County.

Q. How long have you been so employed?

A. Since July, July the 11th, 1963.

Q. Do you live here in Corpus Christi?

A. I do.

Q. Do you have occasions to perform guard duties at the hospitals?

A. Yes, sir.

Q. Did you have the occasion to perform any guard duties in connection with Reagan Logue in May of 1968?

A. I did.

Q. Do you recall when that was?

[668] A. The first night that he was in there.

Q. In the hospital?

A. Yes, sir.

Q. Do you know what he was admitted to the hospital for?

A. He had cut his wrist, I understand.

Q. And where was he when he had cut his wrist?

A. Over at the County Jail.

Q. Did someone request that you stand guard?

A. Yes, sir.

Q. Who was that?

A. Well, it was handled through Mr. Bowers.

Q. That was the Deputy Marshal Bowers?

A. Yes, sir.

Q. What time do you recall going on duty?

A. Around midnight.

Q. And where did you go on duty?

A. At Memorial Hospital, the seventh floor.

Q. The seventh floor?

A. Yes, sir.

Q. Where were you in relation to Reagan Logue when you were standing duty?

A. I was right outside of his door, not too far from the door.

Q. And he was in a room?

[669] A. Yes, sir.

Q. Was the room that he was in locked?

A. Yes, sir.

Q. Did you have the key?

A. No, sir.

Q. Did anyone visit the boy while you were there?

A. Yes, sir.

Q. Who was that?

A. His mother.

Q. How long did she stay?

A. I would say she stayed with him from around thirty to forty-five minutes.

Q. Did she go in and talk with him?

A. Yes, sir.

Q. Did anyone else come up to see the boy?

A. Well, his step-father came up with his wife.

Q. Did he go in and visit with the boy?

A. No, sir.

Q. What kind of, was there any type of surveillance by the hospital people of Reagan Logue while you were on guard there?

A. Well, ordinarily they make their rounds ever so often and they go peep in the windows to see if he was all right.

Q. Did they do that?

[670] A. They do that quite often, yes, sir. In fact, they let his mother in the room to talk to him.

Mr. Pain: Pass the witness.

### CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. Strait, do you frequently perform guard duty?

A. I do.

Q. For the Marshal?

A. For the Marshal and for the Sheriff's Department, also.

Q. I suppose you welcome the extra income?

A. Well, naturally.

Q. And I suppose most of you fellows would be available for that if asked?

A. If they are not on duty at the time, yes, sir.

Q. Well, they always have a little more, a lot of the Deputies, Deputy Sheriffs that are not on duty, on off-duty than on-duty, because of the twenty-four hour around-the-clock operation?

A. Right.

Q. Would you take as much of that guard duty as you could get?

[671] A. I have done quite a little of it, yes, sir.

Q. And I suppose most of you fellows are available for that, and like I say, welcome it?

A. Right.

Q. Because it is extra income for you?

A. Right.

Q. Mr. Strait, I thank you very kindly.

Mr. Pain: I have no further questions.

The Court: You may be excused.

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WITNESS EXCUSED

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Mr. Bowers: Mr. James Stone.

Your Honor, while the witness is coming, we have two exhibits which have been marked as Defendant's Exhibit 2, and Defendant's Exhibit 1. They reflect the academic record or excerpts, and I believe copies have previously been furnished to Mr. De Anda.

Mr. De Anda: Oh, yes.

Mr. Bowers: And we understand there will not be any objections to the authentication [672] of them, and we offer them at this time.

Mr. De Anda: Just a minute—

Mr. Bowers: —Sir, will you come to the Clerk's desk and be sworn, sir?

(Oath administered to the witness by the Deputy District Court Clerk.)

Mr. Bowers: Do I understand Defendant's Exhibits 1 and 2 will be admitted, sir, is that correct?

The Court: You raise no objections?

Mr. De Anda: No, sir.

The Court: They are admitted.

Mr. Bowers: Thank you, sir.

[673]

JAMES L. STONE,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

#### DIRECT EXAMINATION

By Mr. Bowers:

Q. Mr. Stone, please state your name, address, and occupation for the record, please?

A. James L. Stone, 7002 Pharaoh, Principal at Shannon Junior High School.

Q. All right.

Mr. De Anda: I'm sorry, where?

The Witness: Shannon Junior High School.

By Mr. Bowers:

Q. Were you previously assigned to King High School here in Corpus Christi?

A. Yes, sir.

Q. All right, sir, in what capacity and when?

A. I was the First Assistant Principal from 1965 until 1969.

Q. What were your duties in that job, Mr. Stone?

A. My principal duties were attendance and [674] discipline and the general mechanics of school.

Q. All right, sir, all right, sir, now during that period of time, did you have occasion to come into contact with a student named Reagan Logue?

A. Yes, sir.

Q. All right, sir, and in what capacity did you contact Mr. Logue?

A. I saw him on referrals from, discipline referrals from teachers, and in dealing with him on attendance problems.

Q. All right, sir, first of all, with the attendance problem, that was a material part of your responsibility and your job at that time, sir?

A. Yes, sir.

Q. All right, sir, now could you give us an estimate of approximately how many times you had questions raised by Mr. Logue's attendance?

A. Well, they were frequent. I couldn't give—

Mr. De Anda: —Just a minute, I'm going to object. As far as the questions raised about Mr. Logue's attendance, if it is anything, I think this is a hearsay approach to the inquiry, and I'm going to object to anything based on hearsay. I [675] don't have any objections to any conversations he may have had with, with Reagan Logue, as such, at least I am not making that objection now, but I do object to the attendance problem in that that necessarily is based on hearsay that he obtained from somebody else.

The Court: Do you have any objections to his testifying as to how many times the matters were

referred to him with regard to Logue? I don't see that that is any problem.

Mr. De Anda: Judge, I would even object to that, because that would also call for hearsay. I would not object if I knew that the people called him, or something, and eventually he's going to have to testify to that, but I am not—

The Court: —I'm not talking about what somebody told him, just that they did refer him on that particular—

Mr. De Anda: —I would object, yes, sir, to anything other than perhaps a number of times that he talked to Reagan Logue. I wouldn't object, I don't think, I don't [676] think there would be anything I could say about it, but I would object to anything as to whether or not someone referred Reagan Logue to him, I think that calls for hearsay.

The Court: Do you think you can handle your question within his objection?

Mr. Bowers: No, sir, I think what we need to do is ask him how many times he investigated a complaint of truancy, the truancy of Reagan Logue, and I think I am entitled to do that, sir. He would know whether or not a complaint was made, and he would know the investigation that he made, that would be a matter within his own knowledge.

The Court: The complaints made to him, I'm going to overrule the objection.



Mr. De Anda: You're going to overrule my objection? I would object to it as the matter being hearsay, Judge.

The Court: All right.

By Mr. Bowers:

Q. Can you give us an estimate of the number of times that you conducted an investigation or [677] inquiries into Mr. Logue's attendance record at school?

A. It was my job to observe the attendance of students, and when they were absent, any time they were absent, they had to come and see me before they could be readmitted to school.

Q. How many times did you have the occasion to interview Reagan Logue in this connection?

A. I'd have to estimate it, but I could say at least ten times.

Q. At least ten times? Sir, all right, could, could you tell us whether or not it could have been more?

A. It could have been more, and probably was more.

Q. In what other capacities did you see Logue in?

A. As he was referred to the office for disciplinary reasons.

Q. Approximately how many times was that?

A. I would say that Reagan was referred seven or eight times for that, too.

Q. Seven or eight times? Now approximately how many students were in King High School at that time, sir?

A. About eighteen hundred.

Q. There were a number of, at least ten investiga-

tions [678] for, on the attendance basis, and eight or ten times during the course of that year over disciplinary matters—

Mr. De Anda: —I don't believe he said that it was over the course of the year; I think he said he saw him that many times.

Mr. Bowers: I will be glad to rephrase the question.

Mr. De Anda: Well, ask him over what period of time.

Mr. Bowers: Let me ask my own questions.

Mr. De Anda: I'm going to object to the question he has asked, he's putting words in the witness' mouth, saying it being over the course of a year, and the witness hasn't testified to that, in fact.

The Court: You may rephrase your question.

Mr. Bowers: Thank you, sir.

By Mr. Bowers:

Q. Mr. Stone, over what period of time were you associated with Logue under your supervision in that capacity?

A. He was in school one full year, from '65 and '66, and a half year in the year of '66-'67.

Q. All right, sir, now the number of times for the [679] attendance and the disciplinary questions that were raised, was that over that same period of time?

A. Yes, sir.

Q. Okay, now could you tell us whether, based on your experience, that is in excess of, or just about equal to, or less than the number of times that the average male student would be called in on such matters?

Mr. De Anda: Your Honor, I really don't see the relevancy of that question at all. If there is any such figure available, I still don't see the relevancy of it, in the average student being called in.

The Court: I think it could be relevant.

By Mr. Bowers:

Q. Could you answer the question, please, sir?

A. This is more than an average student.

Q. All right, sir, well, I will call your attention sir, to a question about, about departing from class with reference to Reagan Logue, and particularly in an English class, do you recall that instance, sir?

A. Yes, sir.

Q. Okay, will you tell us about it, please?

[680] A. Reagan walked out of his English class and told his teacher he was—

Mr. De Anda: —Now just a moment, Your Honor, I'm going to object to any hearsay that this witness got from anybody because it is hearsay unless he was present whenever the occurrence took place.

The Court: All right, I believe that is a proper objection and I will sustain it.

Mr. Bowers: May I ask him, sir, if he recalls investigating an allegation of such an incident?

The Court: You can ask him if he did make such an investigation.

By Mr. Bowers:

Q. Did you make such an investigation, Mr. Stone?

A. Yes, sir.

Q. All right, sir, and as a result of that investigation, what did you do as a consequence, what disciplinary action did you take?

A. I told Reagan that since he had dismissed himself from the class that—

Mr. De Anda: —Your Honor, the question is not, the answer is not responsive. He asked what disciplinary action the witness [681] took, and I think he may—

The Court: —Just ask him what happened and that will stop the problem.

By Mr. Bowers:

Q. I'm sorry. What happened as a result of that?

A. I did not allow Reagan to take his final examination.

Q. All right, sir, and as a result of the inquiry that you made there, were there other matters, without going into and telling us what they were, were there other matters with regard to other classes that were, that were, that came to your attention at that time?

A. Yes, sir.

Q. All right, sir, and tell us what happened to Reagan in the matter of disciplinary measures as a result of these items.

A. We, upon investigation, we found that he had—

Mr. De Anda: —This, again, Your Honor, I'm going to object to any investigation that this man made and what his investigation disclosed as being, if it is based on hearsay, but what he personally did, it might be admissible, but what anybody told him or what his conclusions are as to [682] his investigations, that is rank hearsay, and conclusions, and not made for any purpose whatsoever in this case.

Mr. Bowers: My question was, what went, what has, what was done as a result of the investigation.

The Court: What he did?

By Mr. Bowers:

Q. Mr. Stone, what, of your own personal knowledge, did the school do?

A. We did not let Reagan take the test in several of the other subjects, too.

Q. All right, can you tell us whether or not Reagan was ever suspended from school?

A. Yes, sir.

Q. On how many occasions, sir?

A. I have, I can't accurately answer that question. I remember suspending this boy from school, I would say, I would say several times.

Q. Can you—

A. —And this was in regard to the truancy.

Q. Are you able to give an estimate of that, sir, about how many times this occurred?

A. I suspended him for a conference with his parents, I'd say at least two or three times.

[683] Q. Two or three times, sir, was there a final suspension from King High School?

A. Yes, sir.

Q. All right, sir, what was the occasion of that, without going into the details of what you were told by anyone?

Mr. De Anda: Your Honor, I'm going to object if he was suspended from King High School, and if it is something that occurred in the witness' presence, he can testify about it, but I do not think it would be admissible otherwise, I think it would be hearsay and improper and irrelevant.

The Court: He can testify whether or not he was suspended.

Mr. De Anda: Yes, sir, I believe he has done that.

By Mr. Bowers:

Q. Read the question back, please?

(And thereafter the following question was read back by the Court Reporter and is as follows: "All right, [684] sir, what was the occasion of that, without going into the details of what you were told by anyone?"')

By Mr. Bowers:

Q. All right, sir, what, what, what was, excuse me, sir, what was the occasion of the final suspension of Mr. Logue from King High School, without relating the incident upon which it was based?

Mr. De Anda: Your Honor, of course, he doesn't relate the incident and he doesn't know what he means by an objection, by an occasion, but he means what occurred and which did not occur in the witness' presence and that would be based on hearsay and a conclusion on the part of the witness, and to which I would object to it on those grounds.

The Court: I am—

Mr. Bowers: —Your Honor—

The Court: —It seems to me like he should be able to testify as to why he was suspended. That doesn't necessarily mean those factors are true, but if he was [685] suspended for a particular reason, I think he is entitled to say what this reason was.

Mr. De Anda: I don't, and I don't want to belabor it, Judge, I don't want to belabor the matter, but I, may I make an additional comment?

The Court: All right.

Mr. De Anda: Why he was suspended, if it is not admitted for the truth of the matter, it has absolutely no relevancy to the case. What these people did is not any, is not in issue here. All they are interested

in, from the matter of this record and this evidence, is those matters that would effect the issues here, which are either liability, on which this witness, this witness could not testify, or damages, which is the only relevancy that his testimony would have. Now if these are actions of the school, then they can, they can not in any way reflect on Reagan Logue except insofar as his conduct was because of them, and if we are not going into his conduct, and if it is not admitted for that purpose, then, Your Honor, it really [686] has no purpose in this case. Now it is true we have gone into much hearsay in this trial in other matters, but if the Court will recall, that testimony has been restricted to certain, for certain purposes, specifically as applied to the parents, and their knowledge, and their relationship with the boy, which, I think, they probably are legitimate areas of inquiry in a death case. But now we are getting into an independent witness here, and his knowledge, or the conduct of third parties, and the conduct of the school in suspending him, those are no more relevant than the conduct of the policeman in arresting him at all, except as it, it might apply to this case, and the circumstances surrounding it. But not just an arrest in general, or suspension in general; these are, these are acts of third people motivated by matters which are not before the Court, and about which this witness apparently has no personal knowledge, other than what he obtained through hearsay, and I want to be sure that the Court understands my [687] purpose and reasons for objecting to the, to the matter.

The Court: I'm going to go ahead and let it in.



Mr. Bowers: All right, sir.

By Mr. Bowers:

Mr. Stone, was a complaint received from the authorities, without stating what it was, with reference to Reagan Logue's conduct, that is, police action?

A. Yes, sir.

Q. All right, sir, as a result of that complaint, what happened with regard to his final suspension from King High School?

A. As a result of this, he was suspended.

Q. All right, sir.

Mr. Bowers: That's all, Your Honor, that we have of this witness. We pass him at this time.

[688] CROSS EXAMINATION

By Mr. De Anda:

Q. What year was this, Mr. Stone?

A. Are you referring to the final suspension, is that what you are referring to, I'm not sure that I understand your question?

Q. Well, you say he was suspended and the judgment, the record will show he was suspended and he tired to commit suicide over it, I believe.

A. Are you asking what year he was suspended?

Q. Yes, sir.

A. This was in 1967.

Mr. De Anda: All right, I believe that's all I have, thank you, Mr. Stone.

Mr. Bowers: We have no further questions, Your Honor.

The Court: All right, you may be excused, Mr. Stone.

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WITNESS EXCUSED

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Mr. Bowers: Mrs Allard, please, Laura [689] Allard.

Your Honor, perhaps we may save a minute here —Mrs. Allard was called to explain the testing—

Mr. De Anda: —Let her testify, she's here.

Mr. Bowers: I don't think she's been sworn, if you would, Mrs. Allard.

Mr. De Anda: That is Exhibit what?

Mr. Bowers: Exhibit No., I think, I don't recall whether it is 1 or 2.

(Oath administered to the witness by the Deputy Court Clerk.)

Mr. Bowers: Mrs. Allard, will you have a seat over there?

(Discussion held off of the record.)

[690]

MRS. LAURA ALLARD,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

### DIRECT EXAMINATION

By Mr. Bowers:

Q. Mrs. Allard, would you state your name, address, and occupation for the record, please?

A. Laura Allard. I am Counselor at Moody High School.

Q. All right, were you previously stationed at W. B. Ray High School?

A. Yes, sir.

Q. In that same capacity?

A. Yes, sir, as a Counselor.

Q. What education, training, and experience do you have as a Counselor in high school academics?

A. I have received my B.A. Degree from Chicago, at a Teacher's College, and my Master's Degree in Personnel and Guidance work at Northwestern University. I have been a Counselor, this is my seventh year.

[691] Q. Now what are the duties of a Counselor in the position that you are in at W. B. Ray Senior High School, Corpus Christi?

A. Well, you counsel with students concerning their academic program, their college or after, post-high school programs, personal problems, if they have any, and if they choose to discuss these with you, and testing when the time comes. I was, at Ray I was

Test Supervisor, scheduling, changing classes, that type of thing.

Q. Mrs. Allard, what type of test or testing programs were in effect at W. B. Ray High School in the year of 1965-66, that school year?

A. Well, when I say Test Supervisor, I mean that I was in charge of seeing that the College Board Aptitude Tests were given, and was in charge of the Otis test administered to Juniors.

Q. What is your College Board test?

A. The CEEB?

Q. Yes.

A. It is called the College Entrance Examination Board, and it is composed of two tests that you take if you plan to attend college.

Q. All right, basically what is the function of this test, and what is done with the results of [692] it?

A. Well, the function of the test is to determine each student's academic preparation or ability in relation to other students who also are college bound, and the results of it are certified to the individual College to which a student might apply and to his high school.

Q. All right, well, Mrs. Allard, in your capacity as a Counselor at W. B. Ray Senior High School back in 1966, '65, and '67, did your job require that you become familiar with and know the requirements of various higher educational institutions in this State and other areas?

A. Yes, sir.

Q. And to work with them in connection with counseling students as to the administration requirements and other matters?

A. That's right.

Q. Now specifically, were you familiar with the administration requirements of the University of Texas at that time?

A. Yes, up until this present year. In order to enter the University of Texas, on the SAT, or the CEEB, you had to score, if you scored below eight hundred you had to graduate in the five, [693] upper five percent of your class—

Q. —I see—

A. —and if you score between eight hundred and a thousand and graduated in the upper half of your class, you are accepted. If you made over a thousand, that is a combined verbal and math score, you were admitted automatically.

Q. All right, now, Mrs. Allard, we have what has been marked for identification and introduced into evidence a letter on the W. B. Ray Senior High School stationery, reflecting that, reflecting Reagan Logue's standing on the C, double E, B Aptitude Test, and certain other information. Would you examine those figures, please, ma'am?

A. (Witness looking at instrument)

Q. Now examining this, will you tell us whether or not that, looking at the class standing of four hundred and eighty-one in a class of five hundred and eighty-four, and with a total of six hundred and fifty-five points, as to whether or not Reagan Logue would have been qualified for admission into the University of Texas upon completion of his high school work?

A. No.

[694] Q. All right, now it is true, is it not, that he

could perhaps have qualified for other colleges, is that right?

A. That is true.

Q. Now have you had the occasion in the course of your professional work to be required to form an opinion as to whether a student could handle successfully college level work, or whether he would be a good college risk, and advise people in accordance with these opinions?

A. I don't know that I understand all of your question.

Q. Okay, have you, in the course of your job as a Counselor, have you had the occasion to evaluate testing records, performance records in school, and to form opinions, in your capacity as an educator and tester, as to whether or not someone would be a good or a bad risk for higher education?

A. If your question means—if a student would come to me and ask me in my capacity as a Counselor to give him advice as to whether I think that he could succeed on the basis of his test scores, rank in class, and what I know about the entrance requirements of a particular [695] college and university, I would be able to give him this information, but it would have to be in terms of a specific college because they vary.

Q. In other words, I take it from your testimony that you would not be able to form an opinion about the risk?

A. No.

Q. Okay, I withdraw that question then.

Mr. Bowers: I think that's all, Your Honor, we will pass the witness.

## CROSS EXAMINATION

By Mr. De Anda:

Q. How often are these tests that we are talking about administered, Mrs. Allard?

A. They are administered five times a year.

Q. Five times a year?

A. Yes, sir.

Q. This particular test that we have reference to was apparently administered in December of 1966?

A. Yes, sir.

Q. Can you tell me if you would expect, over a two-year interval, or one year and a half interval, [696] for a test, a person's test to, to increase, say this test was taken when a child was, oh, sixteen years of age, and by the time they are eighteen, might you expect a higher grade on the test, or could you answer that?

A. Yes, basically a score, they give you a thirty point variance, thirty points above or below this figure if you are to retake the test.

Q. This six hundred and fifty-five?

A. Yes, sir.

Q. You mean if you retake it two months later, or three months later, you are going to increase it, you might increase it thirty points or—

A. —Or might decrease thirty points.

Q. Might decrease thirty points, and if you take it two or four months after that, you would increase it another thirty points?

A. No, sir, by and large it would probably not vary more than thirty points than what the others are.

Q. For the rest of your life?

A. That's what the statistics have shown.

Q. Okay, well, that's what I wanted to find out. And you say that—of course, if a person was ill, or mentally disturbed at the time he took [697] this test, it wouldn't be truly indicative of his intelligence, is that right?

A. That's right.

Q. And if later on a person that took this kind of a test, while he was mentally disturbed, or for whatever reason there might be, took the test after rehabilitating himself, or curing himself of the illness, the test might be substantially higher?

A. It could be.

Q. Beg pardon?

A. It could be, yes.

Q. In other words, you could not place—if they told you, "Look, the person that took this test was insane, or on the verge of it," and the results, as far as any permanent determination of that person's intelligence or ability, wouldn't be worth a plug nickel, would they, depending on the disease and so forth?

A. I don't know that I really understand that because your question—

Q. —Well, all right, let me see if I can rephrase it. If a person was psychotic whenever they took this test, and by psychotic I mean crazy—

[698] A. —Yes, I understand.

Q. —to some degree mentally unbalanced or mentally deranged—

A. —Right—

Q. —or suffering from such a condition, could you stake your reputation here on what you have testified about that test and its results?



Mr. Bowers: Your Honor, I hardly think the question of staking her reputation on it is an appropriate way to approach it. I think the question should be whether or not a valid opinion could be rendered on it.

The Court: I think, isn't that about the same thing?

Mr. De Anda: That's what I thought.

By The Witness:

A. Well, you understand that as a Test Supervisor, giving the test, I am in no way aware of your mental state, the mental state of any person who takes it.

Q. I understand that.

A. Okay.

Q. Absolutely. Let's assume that you gave this test, and you got these results on Defendant's Exhibit [699] No. —what is that?

Mr. Bowers: 2.

By Mr. De Anda:

Q. 2, and later on you found out that this particular individual was psychotic, was mentally ill, would the test be, would the test be indicative of his intelligence at that time under those conditions?

A. Right.

Q. Because there is the test—

A. —That's exactly right—

Q. —And what I am asking you is, is it a valid

and true indication of that, that person's ultimate capabilities if he later became well?

A. Probably not, but he would not be taking this test later, because this is strictly a test that is given only to youngsters at this particular time in their life.

Q. All right, all right, but he wouldn't be taking this test later because the purpose of this test, I guess—

A. —Right—

Q. —is to get to college?

A. That's exactly right.

Q. But then the test and its results would not be [700] valid insofar as that particular person is concerned insofar as it might lend knowledge to his innate intelligence?

A. No, but this test would qualify, would permit him to enter some colleges as the score stands right now.

Q. I think the Judge understands what I am trying to ask you, and I think he understands your answer, but I am not sure that I do. I guess I don't.

The Court: I don't think it is pertinent anyway.

Mr. De Anda: All right, sir, then I don't have any more questions. I can take a hint, thank you, Mrs. Allard.

The Witness: Okay.

Mr. Bowers: I think that's all from this witness, Your Honor.

The Witness: Thank you.

Mr. Bowers: Thank you, Mrs. Allard. If I may, I will hand this back to the Clerk.

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WITNESS EXCUSED

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[701] Mr. Pain: We will call Sam Roberts.

Mr. Bowers: And I might add that this will be a fairly long witness.

(Discussion held off of the record.)

Mr. Pain: Come around here.

(Oath administered to the witness by the Deputy Court Clerk.)

SAM J. ROBERTS,

was called as the next witness on behalf of the Government, first being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. Pain:

Q. Would you state your name, please, sir?

A. Sam J. Roberts.

Q. How are you employed, Mr. Roberts?

A. I am a Supervisor with the Bureau of Narcotics and Dangerous Drugs.

Q. And where are you stationed?

A. Chicago, Illinois.

[702] Q. How long have you been in the Bureau of Narcotics and Dangerous Drugs?

A. Since the merger in 1968.

Q. And what was the Bureau of Narcotics and Dangerous Drugs prior to the merger?

A. I was with the Bureau of Drug Abuse Control prior to that time.

Q. And how long were you with that organization?

A. Since its initiation in 1966.

Q. And now both of those agencies that you described are federal agencies, are they not?

A. Yes, sir.

Q. How were you employed prior to 1966?

A. I was with the Food and Drug Administration as an Inspector.

Q. And how long were you so employed?

A. Since 1962.

Q. What was your employment prior to that?

A. None.

Q. You were a student?

A. Yes, sir.

Q. During your tenure as an agent with the Food and Drug, what were your duties?

A. Primarily my duties were, with the Food and Drug Administration, were the enforcement of the [703] Food and Drug laws related to illegal distribution of pills, and amphetamines, and barbituates, and those types of drugs.

Q. And what were your duties with the, what was that second agency?

A. The Bureau of Drug Abuse Control.

Q. What were your duties with the Bureau of Drug Abuse Control?

A. My primary duties with them was to investigate both covertly and, and openly the trafficking of dangerous drugs.

Q. And your duties now with the Bureau of Narcotics and Dangerous Drugs?

A. Sir?

Q. And your duties now with the Bureau of Narcotics and Dangerous Drugs?

A. Mainly the management, or a supervisory capacity, supervising a group of agents who are enforcing the Federal Narcotics and Drug Laws.

Q. And you were with the Bureau of Drug Abuse and Control during the early part of May, of '67, is that correct?

A. In '68, '68.

Q. Early—okay, were you with them also in the early part of '67?

[704] A. Yes, sir.

Q. And all during '67 and the early part of '68, too?

A. Yes, sir.

Q. Did you have the occasion to have an assignment concerning the Plaintiff in this, excuse me, the deceased in this case, Reagan Logue?

A. Yes, sir.

Q. And explain what the circumstances of that particular assignment were?

A. To go into the Austin, Texas area in an under-

cover capacity and investigate traffic in dangerous drugs and, and also marijuana.

Q. And how long did this undercover investigation work of yours in Austin, during this period of time, last?

A. Approximately, approximately two months.

Q. From what period of time to what period of time?

A. From the first part of February, 1968, until, until about the 1st of April of '68.

Q. And did you become acquainted with certain individuals in that area who trafficked in drugs?

A. Yes, sir.

Q. What was your first contact with these individuals?

[705] Mr. De Anda: Your Honor, I ask, if the Court please, that this man's testimony be limited to what, to Reagan Logue, and his personal contacts, or what he personally knows or observed with Reagan Logue. I don't, I don't think, I think it is improper and prejudicial and improper for the witness and the government to go into the direct traffic as it concerns other individuals. It is not relevant to any issue in this case at all.

Mr. Pain: I believe that the evidence to be obtained from this particular witness will show that all of these other individuals also were very closely connected with Reagan Logue, and I think that would be relevant.

The Court: We are just concerned with Reagan Logue, and his, his history up to the time of his death.

I don't know that any other individuals, what they did or might have done would be particularly pertinent. I think you are, you are going to have to confine your questions with regard to Reagan Logue's activities.

[706] Mr. Pain: All right, sir.

By Mr. Pain:

Q. During this undercover investigation work that you performed in the early portion of 1968, did you have the occasion to come into contact with Reagan Logue?

A. Yes, sir.

Q. And you got to, to know this boy, is that correct?

A. Yes, sir.

Q. Where was the first contact that you had with him, when and where?

A. On February the 20th of 1968, at an apartment where he was living, 408 West 37th Street, in Austin.

Q. In Austin?

A. In Austin, Texas.

Q. What contact did you have with him, would you describe that, please?

A. Yes, sir. I was introduced to Reagan Logue by another student at the University of Texas named Terry Martin. At the residence I also met three or four other individuals that were present at the same time. I went to the residence for the purpose of purchasing a kilo [707] of marijuana.

Q. And did you make that purchase?

A. Yes, sir.

Q. And from whom did you make the purchase?

A. From Reagan Logue, and Paul Gill and Terry Martin was also involved in that purchase. Reagan Logue took, received the money for it.

Q. How much marijuana did you buy?

A. Between seven hundred and eight hundred grams of marijuana.

Q. How much did you pay for it?

A. A Hundred and Forty-five Dollars.

Q. How much is a gram, how many grams are in a kilo?

A. One thousand.

Q. Now would you translate a kilo into pounds so that the Court and the lawyers would be more familiar with it, how many pounds in a kilò?

A. Two point two pounds.

Q. So translated into pounds, there was a little bit less than two pounds?

A. It was a little less than two pounds.

Mr. De Anda: More than two pounds, two pounds, approximately two pounds.

The Witness: Approximately two, it was, [708] well, specifically, I think it was seven hundred and sixty-eight grams, I think was in that purchase.

By Mr. Pain:

Q. All right, roughly two pounds?

A. Roughly two pounds.

Mr. De Anda: All right.



By Mr. Pain:

Q. Do you recall the grade of marijuana, was it good, bad, or indifferent?

A. It was in crude brick form.

Q. Did you have any subsequent contact with Reagan Logue?

A. Yes, sir, I did.

Q. And when was that?

A. On February the 23rd, 1968.

Q. And would you describe that contact with him?

A. Yes, sir, I met Reagan Logue over at 408 West 37th Street, in Austin, Texas, and subsequent to that meeting, I purchased one hundred and one mescaline capsules from Reagan Logue. I think it was Paul Gill who was also present there during that purchase.

Q. What did you pay for that?

A. Three Hundred Dollars.

[709] Q. And what is mescaline?

A. It is a hallucinogenic drug derived from the peyote cactus plant.

Q. Does it have similar effects upon a person as does LSD?

A. Yes, it is a hallucinogenic drug considered as a milder form than LSD.

Q. Did you have a subsequent contact with Reagan Logue after the one mentioned on February the 23rd, 1968?

A. Yes, sir.

Q. And when was that?

A. On March the 3rd, 1968.

Q. And what happened then?

A. I purchased ten LSD capsules, and about thirty-six grams of marijuana from him during this visit.

Q. And that was in Austin?

A. 408 West 38th Street.

Q. And what did you pay for this buy?

A. I paid Fifty Dollars for the LSD, and Ten Dollars for the marijuana.

Q. Did you have a subsequent contact with Reagan Logue?

A. Yes, I did.

[710] Q. And when was that?

A. On March the 13th of 1968.

Q. And what occurred then?

A. I went to 408 West 37th Street about 10:00 o'clock in the evening. Reagan Logue arrived and had everyone assembled in one of the rooms in this, at that particular address. And—

Q. —About how many people were there?

A. Oh, around ten.

Q. And what occurred then?

A. He informed us that he had just returned from Corpus Christi, Texas; that he had visited with David Parrott in jail in Corpus Christi; and he said he was, had received instructions from David Parrott with reference to organizing his drug operations. He said that he was going to move to another apartment and was going to maintain the residence at 408 West 37th Street to keep the drugs. He further advised that he was going to establish some fronts such as nightclubs with some of the profit from, from the trafficking in drugs to show a profit, to keep the Internal Revenue Service from investigating their organization.

Q. Did Reagan Logue conduct this meeting?

[711] A. Reagan Logue was the leader and conducted the meeting himself.

Q. How long did it last?

A. Around ten, fifteen minutes.

Q. Did you have any subsequent contacts with Reagan Logue?

A. Yes, I did.

Q. And when was that?

A. On March the 16th of '68.

Q. Would you explain that, please?

A. Yes. Reagan Logue moved to another address, it was 617 West 24½ Street, Apartment B; he moved there subsequent to his, shortly after this meeting on 3-13-68. During my conversation with Reagan Logue at this new apartment, I mean, not the new apartment, but this other apartment, he told me that he was going to place me in charge of the drug operations in the North Texas area, including Dallas, Ft. Worth, and Denton. And he further advised me that he had several labs that he was setting up, both in the United States and in Mexico, and he said that he wanted me to, to mainly be an upper eschelon member of the organization and not do the trafficking myself personally, but to let [712] other people do it for me. He showed me a light green colored loose-leaf notebook while I was at the apartment, several pages in there, about three or four or five pages showed the set-up of the organization. He also had numerous, numerous orders in the notebook, ranging from what, the kilo shipments of marijuana to various people throughout the United States.

Q. Did you have any subsequent conversations, meetings with Reagan on that day, on the 16th?

A. Yes, as a matter of fact, as a matter of fact, I did.

Q. And was that later or before this particular meeting?

A. That was, that was before this meeting.

Q. And what happened before this particular meeting that you just related?

A. Before this meeting, Agent Sulac and I, we went to 408 West 37th Street, and, and—correction, just prior to this, I had gone to the, to the other apartment where Reagan Logue was, and for the purpose of buying, making another purchase of marijuana, and he said that the shipment had come in and it was over at 408 West 37th Street address. And we subsequently went over [713] there and bought a pound of marijuana.

Q. Well, did Reagan tell you who to see over there and where to go?

A. Yes, he told us where to go and told us to see Joe Ennis, or Richard Neal, or a guy named, an individual identified as Zitz. He said they would be over at the other apartment and they would take care of us.

Q. Did you go to that other place?

A. Sure did.

Q. Did you make a buy there?

A. Yes, sir, we bought approximately a pound of marijuana, manicured marijuana.

Q. How much did you pay for that?

A. Seventy-five Dollars.

Q. What was the quality of that marijuana?

A. It was finely manicured marijuana.

Q. When you were at this place where you made

this buy, was there anything else that occurred there?

A. Well, they showed us the—

Mr. De Anda: —Just a moment, Your Honor, I didn't object to the purchase because I think it was related to what Reagan Logue told this man, and on that basis, I [714] think it is probably admissible, but anything else that happened, that would not be relevant to any issue in the case, as I see it, in regards to Reagan Logue.

The Court: Well, whatever may have been related to Mr. Reagan Logue is, is pertinent, but, but—

Mr. De Anda: —Yes, sir.

The Court: —not the other individuals.

Mr. Pain: I think I can connect it up, Your Honor.

The Court: All right.

By Mr. Pain:

Q. At this address that you made this last, latest buy, did Reagan Logue live there a short time earlier?

A. He certainly did.

Q. How many days prior to the time that you made this particular buy did Reagan Logue live there, if you know?

A. Approximately three days prior to that, because he moved to the new apartment somewhere around the 13th or, and this was on the 16th—

Q. —All right—

[715] A. —of March.

Q. Did you, what, if anything, did you observe at this apartment during the time you made this buy, anything unusual?

A. Well—

Q. —If anything.

Mr. De Anda: Your Honor, again I am going to object to anything, anything else unless he can testify that it was in the same way when Logue had it, if it is relevant to the case, relevant to Logue, and anything that they found in the apartment other than the buy, as I understood his testimony, Logue advised him to go over there and buy this marijuana, which he did, a pound of it, I believe he said, isn't that right, sir?

The Witness: Yes, sir.

Mr. De Anda: And anything else that might have been in the apartment, I don't care if Logue just lived there yesterday, or a month before, it would not be relevant unless it is something that Logue, that this witness knows of his own knowledge that existed there while Logue lived there.

[716] Mr. Pain: I think that whatever he observed there would be relevant because of the short space in time from which Reagan Logue moved from there and could, by inference, certainly be traced to Reagan Logue.

Mr. De Anda: Well, that's absolutely one hun-

dred percent wrong, Judge, if somebody else is already living in the apartment, I don't care if he moved out thirty minutes before.

The Court: Unless Reagan Logue was there, you can show that he was, had something to do with what went on, but I will sustain your objection.

Mr. De Anda: Thank you.

By Mr. Pain:

Q. Did you have any subsequent contact with Reagan Logue after the two encounters on the 16th of March of '68?

A. Yes, sir.

Q. And when was that?

A. March the 19th, 1968.

Q. What, where did you go and what happened, explain that.

[717] A: I went to 617 West 24½ Street, to his apartment, his new apartment, and Agent Sulac and I went to the apartment. And Reagan Logue greeted, greeted us at the door with a, with a loaded twenty-two caliber pistol.

Q. Did he say anything?

A. He told us to come on inside.

Q. And did you?

A. Yes, sir.

Q. Was he making, what was he doing with the pistol?

A. Well, he was just playing around with the pistol. We went to the living room area, and he told Agent Sulac and I that he had some reliable infor-

mation, that is, I mean his national organization that he was setting up, had been penetrated by some Feds, and he said that one of the Feds' name was Sam Roberts, and the other one was Robert Hines.

Q. What name were you going by at the time?

A. Sam Pearce.

Q. Did, how long were you with Reagan Logue at that particular encounter?

A. Oh, around fifteen minutes, fifteen or twenty minutes.

[718] Q. And what, if anything, did he do with the gun during that time?

A. I asked Reagan to let me take a look at the gun and I unloaded the gun and gave it back to him.

Q. Did you have any subsequent encounters with him?

A. Yes, sir.

Q. And when was that?

A. On March the 22nd, 1968.

Q. And would you explain that, please, sir?

A. Yes, sir. Agent Sulac and I saw Reagan Logue at 617 West 24½ Street in the early part of the evening. Present were Reagan Logue, and Paul Gill, and Jack Futch, (spelling) F-U-T-C-H, Medders, (spelling) M-E-D-D-E-R-S, I guess, and Joe Ennis, and I think a couple of others were present during this, during this visit.

Q. Now did you have any conversation with Reagan Logue?

A. Yes, sir. Reagan Logue said that they were going to Mexico to pick up a load, and asked me whether I would contribute to it, to the bank, Two Hundred Dollars, and drive them to Mexico, and I would



receive five kilos from the, from [719] the subsequent shipment of marijuana which they said would be around Two Hundred kilos.

Q. Did you so agree?

A. I so agreed.

Q. And then what happened as a result of this encounter?

A. I handed him, handed him Two Hundred Dollars and he included that with a large roll of money. And I told him that I would be back in, in about an hour and would be prepared to drive to, to Mexico, to deliver the money. He told me that I would in no way come in contact with the marijuana, that my purpose would be to deliver the money to the supplier and the, and the marijuana would, would come into the Austin area a day or so later.

Q. Did you make the trip to Mexico and deliver the money?

A. I made the trip to Mexico with, with some of the other people and delivered the money to the supplier in Mexico.

Q. And then after you were there in Mexico, where did you go?

A. Returned to Austin, Texas.

Q. Did you later learn that this load came into the [720] country?

A. Yes, sir.

Mr. De Anda: Your Honor, I object to that, if he learned about it. If it is something of his own personal knowledge, fine, but if not, it would be based on hearsay and conclusion.

The Court: I sustain the objection.

By Mr. Pain:

Q. Did you have any knowledge of your own that this load came into the country, did you see it?

A. I didn't personally see it. I had a conversation with Reagan.

Mr. De Anda: Your Honor, I object to that if he didn't personally see it. It is a conclusion and I would object to it, Judge.

The Court: If Logue told him, I think that that would be—

Mr. De Anda: —Yes, sir, I think so. He can testify to what Reagan told him.

The Court: That's right.

By Mr. Pain:

Q. Did you subsequently have a conversation with Reagan in connection with this load?

A. Yes.

[721] Q. What did he tell you?

A. Reagan Logue said that his load had been busted near Freer, Texas, that Joe Ennis had been arrested, and that the Feds had gotten over two hundred kilos of marijuana.

Q. A hundred kilos is how many, how many pounds is that?

A. That's about two hundred and twenty pounds.

Q. Now you had occasion in encountering Reagan Logue several times during this approximate two months' period in early 1968, did you also come into

contact with other people involved in this particular operation?

A. Yes, sir, numerous.

Q. How many people were involved in it?

Mr. De Anda: Your Honor, I don't want to waive anything, and I don't see the relevancy of the other people or how many people were involved, other than what might, he might testify as to those people that were present with Reagan Logue and he has already testified about, I think he said something like ten or something, if I remember correctly, and I don't see—

The Court: —I will let him answer this [722] question, but nothing further than that.

By The Witness:

A. It was approximately, approximately ten to fifteen people involved in the, in the operation. Reagan Logue personally introduced me to several of these people, and including the one who Reagan told me was in charge of the Washington, D.C. area, another one that was in charge of the New Orleans area, and another one that was in charge in Miami. He introduced me to several of them during this investigation.

Q. During your various encounters with Reagan Logue, and these other individuals, did you have a chance to observe their relationship, observe how they acted towards one another, and, and what the relationship with one another was?

A. Yes, sir.

Q. Did you observe whether or not Reagan Logue appeared to be a leader of all of these other individuals?

A. Yes, sir.

Q. And did he appear to you to be such a leader?

A. Yes, sir.

Q. Now concerning the two hundred and twenty-nine or, excuse me, the approximately two hundred [723] and twenty pounds of marijuana that was busted there at Freer, do you have an opinion as to its value?

A. Yes, sir, I have an opinion as to its value.

Q. Perhaps before I ask that opinion, let me ask you if you have, in your work as a Narcotics Agent, how long have you been a Narcotics Agent?

A. Well—

Q. —Would that be an accurate word to describe your work, as a Narcotics Agent?

A. Yes, my primary duties and responsibilities are, for the last, about nine years, I have been in the undercover field; mostly what I have done is undercover work.

Q. And during your work, have you had the occasion to work with marijuana and see it and deal in it?

A. See it and what, sir?

Q. Deal with it and in it?

A. Yes, sir.

Q. And you have done so on several occasions?

A. Many occasions.

Q. And have you come to recognize marijuana if and when you see it?

A. Yes, sir, unless it is finely manicured, then it's

difficult, but if it is not finely [724] manicured, I could very easily identify it.

Q. Then in your work as an undercover agent, you have made quite a few buys of narcotics, including marijuana, have you not?

A. Yes, sir.

Q. Now in connection with the two hundred and twenty pounds that was busted near Freer, would you give an opinion as to its value, the retail value?

A. Yes, sir, considering the retail value, which would be, the straight price per marijuana cigarette, which was going for about a Dollar, for about a Dollar a cigarette, most of this is, the average size cigarette, it usually weighs about five grains or somewhere thereabouts, and if I am getting my computations straight here, just a moment— (Witness figuring on instrument)

Mr. De Anda: Your Honor, I think we are dealing here, for whatever it is worth, in bulk marijuana. And as I understand it, these Narcotics Officers love to give these figures, give the figures in money values somewhere along the way, it is impressive in the newspaper, but I was [725] wondering whatever the value of the bulk marijuana is, that's what we are talking about, and apparently that's what his transactions were with this young man that this gentleman has talked about. I don't think that the market price or retail price of cigarettes is particularly relevant or even enlightening in the case at all, and I really don't see the relevancy in it anyway. I don't think that's what we are dealing in here to start with, and it's just preju-

dicial, Judge, and they are trying to make a marijuana case out of the trial.

The Court: It is not of any interest to me. In other words, the dealing in it is the primary thing that is of interest to the Court. I don't, I don't, it really doesn't make any, there is no relevancy, as far as I can see, as to how much it is worth. We know that.

Mr. Pain: All right, but for the record can he go ahead and get, go ahead and give his opinion?

The Court: He can put it in the record [726] on a Bill.

Mr. De Anda: All right.

The Court: And you can ask him whatever questions you want to in regard to this particular question.

Mr. De Anda: I will ask him, well, Judge, I'm not waiving my objection, and I think it might save time, I am going to ask relatively few questions, I think.

The Court: Go ahead and make your Bill right now.

Mr. Pain: What is your opinion as to that value?

The Witness: A conservative, a very conservative estimate, I would say, would be a Hundred Thousand Dollars.

Mr. Pain: Pass the witness, Your Honor.

[727] CROSS EXAMINATION

By Mr. De Anda:

Q. Just a couple of questions. First, I guess it would be in connection with that Bill—now as I understand it, you threw Two Hundred Dollars in the kitty for the purchase of this marijuana, is that the marijuana that you contributed to?

A. This is the portion that I contributed to, to that load down there.

Q. All right, in addition to that, you threw in a trip up there?

A. Yes, sir, I drove down to Mexico.

Q. Now for your Two Hundred Dollars you would get how much marijuana?

A. I was going to get five kilos.

Q. That would be one-twentieth of the total load, if it was a hundred kilos?

A. That's correct.

Q. So then that would be the total cost, assuming you were not gypped or swindled or paid more than anybody else, about Four Thousand Dollars, for the cost of that one hundred kilos?

A. Yes, sir.

Q. Or would it be less than that?

[728] A. Well, Reagan Logue told me what he was paying the supplier down there for it.

Q. What did he tell you he was paying for it?

A. He said he was paying Thirty-two Dollars a kilo, and selling it for a minimum of a Hundred and Fifty, a minimum of a Hundred and Fifty Dollars a kilo.



Q. All right, now on the, you say that you dealt with Reagan several times and bought either marijuana or some other drug from him. Incidentally, you mentioned dangerous drugs and marijuana, isn't marijuana a dangerous drug, also, or do you consider it a dangerous drug?

A. Well—

Q. —Or is it simply an illegal drug?

A. I consider it to be a dangerous drug. The active drug ingredient, which is cannabis sativa, is certainly very dangerous.

Q. All right, I guess the reason I asked the question is you said dangerous drugs and marijuana, and I didn't know there was any distinction in your department.

A. Well, there is a certain distinction, and also there is a distinction, you know, in the state laws, also, which I am sure you are aware of.

[729] Q. No. What was the total amount of money that you gave Reagan Logue in, in your dealings with him, do you recall?

A. I'd have to add them up, sir.

Q. Well, give me an estimate of the amount.

A. Well, a Hundred and Forty-five and Seventy, and—

Q. —Two Hundred, say—

A. —Three Hundred Dollars—

Q. —That's Five Hundred and Fifteen?

A. And the Two Hundred on the part, the part on that load.

Q. That's Seven Hundred and Fifteen, Seven Hundred and Fifteen Dollars?

A. Uh-huh.



Q. In this two months' period?

A. Uh-huh, yes.

Mr. De Anda: Thank you, Mr. Roberts.

Mr. Pain: I have no further questions.

The Court: You may step down.

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WITNESS EXCUSED

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[730] The Court: We will take a fifteen minute recess at this time.

(And after a short recess, Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, and the following proceedings were had, to-wit:)

The Court: You may be seated.

SAM J. ROBERTS,

having been previously sworn, was recalled to the witness stand and testified as follows, to wit:

FURTHER CROSS EXAMINATION

By Mr. De Anda:

Q. Mr. Roberts, for the record, you are the same Sam Roberts that was testifying before we recessed?

A. Yes, sir.

Q. And I asked you, after we recessed, and forgive [731] me for getting into this, but these people that you were dealing with and the people that were, that you saw there with Reagan Logue, for the most part, were they either college students or college age students there in the Austin area?

A. Yes, sir.

Q. And not all of them were in college, I believe?

A. Not all of them were in college.

Q. But they were all young people that lived there in Austin?

A. Well, they, they just all, they didn't all live there in Austin, but they were, well, around, between seventeen or eighteen, to twenty-four years old, in that age bracket.

Q. I see, that's all I had to ask. Thank you.

The Court: Are you all through?

Mr. Pain: I have no more questions.

Mr. De Anda: As far as I'm concerned, this witness may be excused. I understand he wants to get back where it is cold.

(Discussion held off of the record.)

The Court: Thank you.

[732]

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WITNESS EXCUSED

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The Court: All right, gentlemen, based on our conversation in Chambers, we will recess until 9:00 o'clock in the morning at which time Plaintiff can put on such additional testimony with regard to the records at the County Jail, as you may desire.

Mr. De Anda: I may have one other witness, a rebuttal witness.

The Court: All right, you have rested?

Mr. Pain: Yes, sir, Your Honor, that concludes the Government's case.

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DEFENDANT RESTS

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The Court: Then at the conclusion of the testimony, we will argue the case.

Mr. Pain: All right.

Mr. De Anda: Fine.

The Court: Thank you.

[733] (And thereafter on January the 29th, 1971, at 9:00 o'clock A.M., Court reconvened in the above entitled and numbered cause, all parties present and presiding as before, and the following proceedings were had, to-wit:)

The Court: Please be seated.

Mr. De Anda, do you have some additional—

Mr. De Anda: Your Honor, I would like to make a statement to the Court in connection with the matters that we took up yesterday afternoon, pertaining to the Nueces County Jail records.

The Court: All right.

Mr. De Anda: Mr. Phil Maxwell, my associate, went over there yesterday and did examine the time, the punch cards that the jailers use when they make the rounds upstairs in the evening. And it developed that many of the cards have no dates, some of the cards do have dates, and it just so [734] happens that he was unable to find any dated cards for the period of time which is material here, that is May the 24th and 25th. So for that reason, there is no point, it would not be probative of any matter before us. Also the records on whether or not Mr. Reyna, or Mr. Barber, or Mr. Lowrance worked the day preceding the death—

The Court: —That's the 24th?

Mr. De Anda: Which was May the 24th, are unavailable because they keep no records of that either. They have some shift records, they didn't have those, but even the shift records apparently are not reliable because it is very often that the personnel in the jail trade off for each other, and there is no records at all kept of that. Consequently, I don't know of any-

thing that those records would add to the case. They are available for what they are worth, but we could see no point in bringing them down. And if the Government wants to bring them down, they are welcome to do so, but I really don't [735] think it would be helpful.

The Court: Do you have anything else to bring up?

Mr. Pain: No, sir.

Mr. De Anda: Does the Government accept that statement as such? We can put formal proof on by putting on Mr. Maxwell, but I don't believe it is necessary, but if the Court feels we ought to have formal proof on it—

Mr. Pain: —That sounds like a fair statement.

The Court: We won't go into the formal proof and will accept the statement of Counsel.

Mr. De Anda: We have nothing further to offer, Your Honor.

Mr. Pain: Your Honor, at the close of my case yesterday, I failed to offer into evidence the certified Court documents which I had asked Counsel about last week, I think it was, and he said he had no objections to their authenticity. At this time I would like to offer these into evidence as Government's Exhibits 3, 4, [736] 5. These represent the indictment out of Laredo, Texas, the sealed indictment out of Austin, Texas, and the docket sheet out of Austin,

Texas, which reflects the plea of guilty of Reagan Logue on the Austin indictment.

Mr. De Anda: Your Honor, I have—anything with reference to the Austin matter, I have no objections to it, because it is already in evidence anyway. And I think it would be harmless. Insofar as the Laredo indictment is concerned, I don't know if I would object to it for the reason, well, let me read it first, Judge.

The Court: All right.

Mr. De Anda: I have read it, but—(looking at instrument)

Mr. Bowers: Your Honor, while Counsel is reading that, may I be excused from the Courtroom for a few minutes? There was some material I thought I had with me, but I don't seem to have it now.

The Court: Surely.

Mr. De Anda: Well, there's been so much comment about this Laredo matter, Judge, [737] and also the Order that was entered on the sanity question, that I don't know of any, if it is of any benefit to the Court to have it in the record, but I am not going to object to it.

The Court: All right. I will admit the Exhibits.

Mr. Pain: That would be Exhibits 3, 4, and 5.

The Court: All right.

The Clerk: 3 is the Austin indictment, 4 is the docket sheet from Austin, and 5 is the Laredo indictment.

The Court: Now is that it? Does that conclude all the testimony, is there anything further?

Mr. Pain: That's it.

The Court: As far as the Government is concerned?

Mr. Pain: That concludes the Government's case.

Mr. De Anda: Your Honor, I have nothing further.

The Court: All right, as soon as Mr. Bowers returns, we will start the arguments.

[738] Mr. De Anda: Pardon me—

The Court: —I say, as soon as Mr. Bowers returns, we will start the arguments.

Mr. Pain: Your Honor, do you have any objections if Mr. Bowers and I split up our argument?

The Court: I have no objection. How much time do you-all want?

Mr. De Anda: Judge, I don't really expect that I will, in view of the briefing that we have done, I think that this resolves some of the problems I anticipated that we might have to argue, and I will make reference to, to some of these cases, and these, this is your copy, Judge, on the cases, and I have given a

list to Counsel in addition to those that we gave out, gave you the other day.

The Court: Yes, sir.

Mr. De Anda: That we believe have some bearing in this lawsuit on the various aspects of it. Frankly, I thought at first that the law might be more confused than it is. I don't really think the law is as confused as I was about it, so—

[739] The Court: —Just unconfuse the Court, if you will. Will you need thirty minutes, forty-five minutes, an hour, or what?

Mr. De Anda: Judge, if you will just not give me a time limit, and if you think I am not being helpful, let me know and I will sit down as graciously and quickly as I know how.

The Court: We will just do it that way.

Mr. Pain: All right, I don't anticipate—I'm going to argue primarily the fact issues and Mr. Bowers is going to argue some of the law issues as we see it, and I don't anticipate that my argument, that it will take more than ten or fifteen minutes. I don't know what Mr. Bowers anticipates, do you have any idea?

Mr. Bowers: I don't think it will be more than that, sir.

The Court: Mr. De Anda, as you argue, you will be arguing several different points as you go along,



and if, with regard to a particular point, I feel satisfied, I will let you know and then you can move on.

[740] Mr. De Anda: At the same time, if you feel dissatisfied, if you will ask me or let me know—

The Court: —I will ask the question.

Mr. De Anda: I would appreciate the interruption, if you will tell me.

The Court: All right, you may proceed, Mr. De Anda.

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[741]

## PLAINTIFF'S ORIGINAL COMPLAINT

(Caption Omitted)

(Filed July 1, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Orval C. Logue, individually and as personal representative of his deceased son, Reagan Edward Logue, for the use and benefit of all those entitled to recover under the Texas Wrongful Death Act for the death of Reagan Edward Logue, and on behalf of the Estate of Reagan Edward Logue, Deceased, Plaintiff, complaining of The United States of America, Defendant, and for cause of action would show the Court as follows:

1. Plaintiff is a resident of Corpus Christi, Nueces County, Texas.

2. Plaintiff, on or about June 28, 1968, properly filed the required administrative claim in connection herewith, and although more than six (6) months has elapsed since the filing of said claim, the United States has failed to either accept or reject said claim.

[742] 3. Reagan Edward Logue is dead; at 18 years of age, he died by his own hand on or about May 25, 1968, while in the custody of Defendant.

4. Orval C. Logue, age 54, is the adoptive father of Reagan Edward Logue and brings this suit individually and in his capacity as personal representative of his deceased son, Reagan Edward Logue, for

the use and benefit of all persons entitled to recover for the death of Reagan Edward Logue under the Texas Wrongful Death Act, Article 4671, *et seq.*, Revised Civil Statutes of Texas (1925), as amended, and on behalf of the Estate of Reagan Edward Logue.

5. In addition to Plaintiff, Reagan Edward Logue, Deceased, is survived by his mother, Alice Marie Logue, age 35, and by a half brother, Orval Dean Logue, said Orval C. Logue and Alice Marie Logue being all of the persons entitled to recover under said Texas Wrongful Death Act for the death of Reagan Edward Logue and said Orval Dean Logue, Orval C. Logue and Alice Marie Logue being all of the heirs at law of the said Reagan Edward Logue, who died intestate.

6. By virtue of the fact that this suit is brought under the provisions of the Federal Tort Claims Act, 28 USCA §2671, *et seq.*, this Court has jurisdiction of the within action under the provisions of 28 U.S.C.A., Section 1346(b).

7. Plaintiff would show that on or about May 22, 1968, his deceased son, Reagan Edward Logue, was taken into Federal custody and incarcerated in the Nueces County Jail by Defendant, acting by and through his agents, servants [743] and/or employees, where he remained until on or about May 23, 1968.

8. On or about May 23, 1968, the said Reagan Edward Logue, following a tendency known to Defend-

ant or which, in the exercise of reasonable care Defendant should have known, attempted to commit suicide, and was taken by one or more members of the Nueces County, Texas, Sheriff's Department to Memorial Medical Center, Corpus Christi, Texas, for treatment of his self-inflicted wounds.

9. Upon arrival at the Memorial Medical Center, Corpus Christi, Texas, on or about May 23, 1968, the said Reagan Edward Logue was admitted to intensive care in the psychiatric ward of said hospital and under the care of a trained psychiatrist, where he remained until on or about May 24, 1968, when he was removed or caused to be removed from the care of his doctor and the hospital to a cell in Nueces County Jail by Defendant acting by and through its duly authorized agents, servants and employees.

10. At the time Reagan Edward Logue was removed from the care of his doctor and from the hospital as aforesaid, Defendant by and through its duly authorized agents, servants and/or employees, was fully apprised of the fact, or in the exercise of reasonable care should have been fully apprised of the fact, that the youth had been demonstrating suicidal tendencies, that the doctors attending the said Reagan Edward Logue were concerned for his safety and were advising and pleading against removing said Reagan Edward Logue from the hospital and that to remove the said Reagan Edward Logue from the care of his doctors and from the [744] hospital to the Nueces County Jail, would, in all reasonable probability, endanger the youngster in body and life.

11. Notwithstanding such circumstances and knowledge, with utter disregard for the safety and well-being of the said Reagan Edward Logue, without justifiable cause and in disregard of the duties imposed upon it by law, and in the face of the pleadings of the boy's mother and doctor, the said Defendant, acting by and through its duly authorized agents, servants and employees, removed and/or caused to be removed, as aforesaid, the said Reagan Edward Logue from the care of his doctors and the hospital to the Nueces County Jail, as aforesaid.

12. On or about May 25, 1968, having been so removed from the hospital to the Nueces County Jail against all medical recommendations, as aforesaid, Reagan Edward Logue did in fact succeed in taking his life, as it had been predicted he would, using as his hangman's noose the very bandages which had swathed the wounds remaining from his earlier attempt at suicide.

13. Accordingly, the death of Reagan Edward Logue was proximately caused by acts of omission and commission on the part of the said Defendant, acting by and through its duly authorized agents, servants and employees, which, collectively and severally, constituted negligence.

14. At all times pertinent to this lawsuit, all of the agents, servants and/or employees of the said Defendant were acting within the scope of their authority and employment.

15. Plaintiff would show that as a direct and proximate result of the negligence of the Defendant, as aforesaid, [745] damages in the amount of at least

One Hundred Thousand Dollars (\$100,000.00) have resulted, for which Plaintiff seeks recovery herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited and required to answer herein according to law and that upon final hearing of this cause he have judgment against said Defendant for the full amount of the damages aforesaid, together with costs of court and general relief.

Respectfully submitted,

ORVAL C. LOGUE, individually  
and as personal representative  
of his deceased son, Reagan Ed-  
ward Logue, for the use and  
benefit of all those entitled to  
recover under the Texas Wrong-  
ful Death Act for the death of  
Reagan Edward Logue, and on  
behalf of the estate of Reagan  
Edward Logue, deceased, Plain-  
tiff

By: Law Offices of:

EDWARDS, DE ANDA &  
ARNETT

P.O. Drawer 480

Corpus Christi, Texas 78403

and

MARVIN FOSTER

714 Buffalo

Corpus Christi, Texas

Attorneys for Plaintiff

By WILLIAM R. EDWARDS

William R. Edwards

[746]

## ANSWER

(Caption Omitted)

(Filed September 29, 1969)

As its answer to Plaintiff's original complaint Defendant, the United States of America, says:

*First Defense*

*Plaintiff's complaint fails to state a claim on which relief can be granted.*

*Second Defense*

Responding specifically to the averments in Plaintiff's Complaint Defendant admits, denies and alleges as follows:

1. It admits the averments in paragraph 1.
2. It admits the averments in paragraph 2.
3. It admits the averments in paragraph 3 except that it states that while at the time of his death Reagan Edward Logue was a federal prisoner, he was confined in the Nueces County Jail in the immediate custody of the subordinates of the Sheriff of Nueces County then in charge of that jail.
4. It states that it is without knowledge of the relationship between plaintiff and the deceased, but upon the information available to it it believes that the allegation that plaintiff is the adoptive father of the deceased is true. All other allegations in paragraph 4 are not averments of fact which it is required to admit or to deny.

- [747] 5. It states that it is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 5.
6. It admits that the Court has jurisdiction of actions brought under the Tort Claims Act, but denies that plaintiff has stated a claim on which relief can be given under the Tort Claims Act.
7. It admits the averments in paragraph 7.
8. It denies the averments in paragraph 8, except that it admits that on May 23, 1968 Reagan Edward Logue cut himself and was taken from the Nueces County Jail to a hospital.
9. It denies the averments in paragraph 9 except that it admits that Reagan Edward Logue was treated for self-inflicted injuries at the hospital and remained in the hospital until May 24, 1968, on which date he was returned to the Nueces County Jail by a Deputy U. S. Marshal.
10. It denies the averments in paragraph 10.
11. It denies the averments in paragraph 11 except that it admits that a Deputy U. S. Marshal took Reagan Edward Logue from the hospital to the Nueces County Jail.
12. It denies the averments in paragraph 12 except that it admits that on May 25, 1968, Reagan Edward Logue hung himself in the Nueces County Jail using bandages.
13. It denies the averments in paragraph 13.
14. It denies the averments in paragraph 14 except that it admits that the Deputy U.S. Marshal who



took Reagan Edward Logue from the hospital to the Nueces County Jail was acting within the scope of his duties as a Deputy United States Marshal in so doing.

[748] 15. It denies the averments in paragraph 15.

Plaintiff, as father or adoptive father, and plaintiff's wife, as the parents of Reagan Edward Logue, through the type of home they furnished for Reagan Edward Logue, the atmosphere in that home, the examples they gave to him from their own actions and their failure to give him proper guidance and training caused Reagan Edward Logue to resort to the use of drugs, including marihuana and LSD, and to sniff glue, and that the use of such drugs and the acts and omissions of plaintiff and his wife, caused Reagan Edward Logue to become unstable mentally, and that this mental instability caused, or in the alternative contributed to, Reagan Edward Logue's killing of himself, and that therefore neither plaintiff nor his wife are entitled to recover any damages which may have resulted from the death of Reagan Edward Logue.

ANTHONY J. P. FARRIS  
United States Attorney

By: GEORGE R. PAIN  
George R. Pain  
Assistant United States Attorney

CERTIFICATE OF SERVICE (Omitted)

## [749] FIRST AMENDED ANSWER

(Caption Omitted)

(Filed October 27, 1969)

As its answer to Plaintiff's original complaint Defendant, the United States of America, says:

## First Defense

Plaintiff's complaint fails to state claim on which relief can be granted.

## Second Defense

Responding specifically to the averments in Plaintiff's complaint Defendant admits, denies and alleges as follows:

1. It admits the averments in paragraph 1.
2. It admits the averments in paragraph 2.
3. It admits the averments in paragraph 3 except that it states that while at the time of his death Reagan Edward Logue was a federal prisoner, he was confined in the Nueces County Jail in the immediate custody of the subordinates of the Sheriff of Nueces County then in charge of that jail.
4. It states that it is without knowledge of the relationship between plaintiff and the deceased, but upon the information available to it it believes that the allegation that plaintiff is the adoptive father of the deceased is true. All other allegations in paragraph 4 are not averments of fact which it is required to admit or to deny.

- [750] 5. It states that it is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 5.
6. It admits that the Court has jurisdiction of actions brought under the Tort Claims Act, but denies that plaintiff has stated a claim on which relief can be given under the Tort Claims Act.
7. It admits the averments in paragraph 7.
8. It denies the averments in paragraph 8, except that it admits that on May 23, 1968 Reagan Edward Logue cut himself and was taken from the Nueces County Jail to a hospital.
9. It denies the averments in paragraph 9 except that it admits that Reagan Edward Logue was treated for self-inflicted injuries at the hospital and remained in the hospital until May 24, 1968, on which date he was returned to the Nueces County Jail by a Deputy U. S. Marshal.
10. It denies the averments in paragraph 10.
11. It denies the averments in paragraph 11 except that it admits that a Deputy U. S. Marshal took Reagan Edward Logue from the hospital to the Nueces County Jail.
12. It denies the averments in paragraph 12 except that it admits that on May 25, 1968, Reagan Edward Logue hung himself in the Nueces County Jail using bandages.
13. It denies the averments in paragraph 13.

14. It denies the averment in paragraph 14 [751] except that it admits that the Deputy U. S. Marshal who took Reagan Edward Logue from the hospital to the Nueces County Jail was acting within the scope of his duties as a Deputy United States Marshal in so doing.
15. It denies the averments in paragraph 15 .

Plaintiff, as father or adoptive father, and Plaintiff's wife, as the parents of Reagan Edward Logue, by their acts and omissions, contributed to Reagan Edward Logue's killing himself, and that therefore neither Plaintiff nor his wife are entitled to recover any damages which may have resulted from the death of Reagan Edward Logue.

ANTHONY J. P. FARRIS  
United States Attorney

By: GEORGE R. PAIN  
George R. Pain  
Assistant United States Attorney

CERTIFICATE OF SERVICE (Omitted)

**[752] SECOND AMENDED ANSWER****(Caption Omitted)****(Filed January 25, 1971)**

As its answer to Plaintiff's original complaint Defendant, the United States of America, says:

**First Defense**

Plaintiff's complaint fails to state claim on which relief can be granted.

**SECOND DEFENSE**

Responding specifically to the averments in Plaintiff's complaint Defendant admits, denies and alleges as follows:

1. It admits the averments in paragraph 1.
2. It admits the averments in paragraph 2.
3. It admits the averments in paragraph 3 except that it states that while at the time of his death Reagan Edward Logue was a federal prisoner, he was confined in the Nueces County Jail in the immediate custody of the subordinates of the Sheriff of Nueces County then in charge of that jail.
4. It states that it is without knowledge of the relationship between Plaintiff and the deceased, but upon the information available to it, it believes that the allegation that Plaintiff is the adoptive father of the deceased is true. All other allegations in paragraph 4 are not aver-

ments of fact which it is required to admit or to deny.

- [753] 5. It states that it is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 5.
6. It admits that the Court has jurisdiction of actions brought under the Tort Claims Act, but denies that Plaintiff has stated a claim on which relief can be given under the Tort Claims Act.
7. It admits the averments in paragraph 7.
8. It denies the averments in paragraph 8, except that it admits that on May 23, 1968, Reagan Edward Logue cut himself and was taken from the Nueces County Jail to a hospital.
9. It denies the averments in paragraph 9, except that it admits that Reagan Edward Logue was treated for self-inflicted injuries at the hospital and remained in the hospital until May 24, 1968, on which date he was returned to the Nueces County Jail by a Deputy United States Marshal.
10. It denies the averments in paragraph 10.
11. It denies the averments in paragraph 11, except that it admits that a Deputy United States Marshal took Reagan Edward Logue from the hospital to the Nueces County Jail.
12. It denies the averments in paragraph 12, except that it admits that on May 25, 1968, Reagan Edward Logue hanged himself in the Nueces County Jail using bandages.

13. It denies the averments in paragraph 13.

[754] 14. It denies the averments in paragraph 14, except that it admits that the Deputy United States Marshal who took Reagan Edward Logue from the hospital to the Nueces County Jail was acting within the scope of his duties as a Deputy United States Marshal in so doing.

15. It denies the averments in paragraph 15.

#### AFFIRMATIVE DEFENSE

Defendant alleges that if negligence be found on the part of any agent or employee of the Defendant for his actions while acting within the scope of his employment, and that if such negligent actions were the proximate cause of the death of Reagan Edward Logue, then such acts of negligence (if any there be) were acts done pursuant to the discretionary function exceptions of 28 USC §2680.

ANTHONY J. P. FARRIS  
United States Attorney

By: GEORGE R. PAIN  
George R. Pain  
Assistant United States Attorney

CERTIFICATE OF SERVICE (Omitted)

[755] PLAINTIFFS' PROPOSED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW

(Caption Omitted)

(Filed January 25, 1971)

To The Honorable Judge Of Said Court:

COMES NOW the Plaintiffs in the above styled and numbered cause and submits to the court proposed findings and conclusions as follows:

1. That this court has full and complete jurisdiction of the subject matter and of the parties, and that venue properly lies in this court. (Stipulation, page 2).
2. That Reagan Edward Logue died by his own hand on or about May 25, 1968, at the age of 18 years. (Stipulation, Admission of Fact No. 1, page 11).
3. That Reagan Edward Logue died by hanging in the Nueces County Jail, using bandages which had been applied in the treatment of self-inflicted cutting wound to his arm. (Stipulation, Admission of Fact No. 5, page 11).
4. That Plaintiff Orval C. Logue is the adoptive father of Reagan Edward Logue and that Plaintiff Alice Marie Logue is the natural mother of the said Reagan Edward Logue, deceased.
5. That Orval C. Logue and Alice Marie Logue are all of the persons entitled to recover under the Texas Wrongful Death Act because of the death of Reagan Edward Logue.



6. That on or about June 28, 1968, the required administrative claim asserting the cause of action herein brought was properly filed and that this suit was filed more than six months following the filing of such claim, and that the United States has failed to either accept or reject said claim.

[756] 7. That on or about May 22, 1968, Reagan Edward Logue was taken into federal custody and incarcerated in the Nueces County Jail by Defendant, acting by and through its agents and employees, who were acting within the scope of their employment for Defendant; the said incarceration was pursuant to a bench warrant issued out of the Laredo Division of this court. (Stipulation, Admission of Fact No. 3, page 11).

8. That on May 23, 1968, while in the County Jail, Reagan Edward Logue cut himself and was taken from the Nueces County Jail to the Medical Center, a hospital in Corpus Christi, Texas; that such cutting was a self-inflicted injury for which he was treated at the hospital and that the said Reagan Edward Logue remained in the hospital until May 24, 1968, on which date he was returned to the Nueces County Jail by a Deputy U. S. Marshal. (Stipulation, Admission of Fact No. 4, page 11).

9. That at all times material hereto, the Deputy U. S. Marshals and other government employees and/or agents, anyone involved in the arrest and detention of Reagan Edward Logue were acting within the scope of their employment and/or agency for the United States Government.

10. That at all times material hereto the members of the Sheriff's Department of Nueces County, Texas, connected with and charged with duties pertaining to the incarceration and detention of Reagan Edward Logue were acting within the scope of their employment and/or agency for Nueces County, Texas.

11. That all persons, whether employees of the Sheriff's Department of Nueces County or of the United States Marshal, connected in anyway with the arrest, incarceration, detention and safe keeping of Reagan Edward Logue from May 22, 1968, until the time of his death, were employees and/or agents of the United States acting within the scope of their employment and/or agency.

12. That prior to the time Reagan Edward Logue was returned to the Nueces County Jail from the hospital on or about May 24, 1968, by Deputy U. S. Marshals, that said Marshals and [757] their supervisors knew that the said Reagan Edward Logue was mentally disturbed; that he had serious suicidal tendencies; that only the day before he had a serious attempt to take his own life.

13. That both doctors who treated and attending Reagan Edward Logue for the self-inflicted injuries of May 23, 1968, and the hospitalization subsequent thereto, recommended to the Deputy U. S. Marshals that Reagan Edward Logue remain in the hospital until transferred to another medical facility.

14. That even prior to this hospitalization for the self-inflicted injuries of May 23, 1968, that the Deputy

U.S. Marshals and government agents arresting Reagan Edward Logue and incarcerating him in the Nueces County Jail knew that the said Logue was mentally unbalanced.

15. That removing Reagan Edward Logue from Memorial Hospital and returning him the Nueces County Jail on May 24, 1968, was negligence on the part of the U. S. Marshal and a proximate cause of the death of Reagan Edward Logue.

16. That the U. S. Marshal failed to adequately supervise and provide adequate surveillance for Reagan Edward Logue after he had been returned to the Nueces County Jail on or about May 24, 1968 and that such failure was negligence and a proximate cause of the death of the said Reagan Edward Logue.

17. That the Sheriff's Department of Nueces County was negligent in failing to provide adequate supervision and surveillance of Reagan Edward Logue after he had been returned to the Nueces County Jail on or about May 24, 1968 and that such negligence was a proximate cause of the death of the said Logue.

18. That leaving the said Reagan Edward Logue unattended in his cell, alone, and without keeping him under surveillance, was negligence on the part of the Sheriff's Department and that such negligence was a proximate cause of the death the said Reagan Edward Logue. Alternatively, the failure of the Deputy U. S. Marshal to advice the Sheriff's Deputies, to keep Reagan Edward Logue under observation or

to have someone with him following his return from [758] the hospital, was negligence and a proximate cause of the death of the said Reagan Edward Logue.

19. That immediately prior to the death of the said Reagan Edward Logue, and because of his psychotic condition and suicidal tendencies, the said Reagan Edward Logue was in a position or peril; that Defendant, acting through its agents and employees, realized that the said Reagan Edward Logue was in a position or peril which he could not protect himself and that such realization and discovery of such perilous position of the said Reagan Edward Logue was in time for Defendant to have avoided the occurrence in question by the exercise of ordinary care in the use of means available to Defendant consistent with Defendant's duties and without danger to Defendant nor to the public; but that after such discovery and realization Defenadnt failed to exercise ordinary care in the use of the means available to avoid the occurrence and that such failure was a proximate cause of the death of Reagan Edward Logue.

20. That in the event the court finds that the acts of Plaintiff and/or third parties were a cause of the death of Reagan Edward Logue that such act or acts were not a sole cause of such death and that in any event the acts of the Defendant were a new and independent cause of the death of Reagan Edward Logue.

21. That Plaintiff Alice Marie Logue has suffered damages in the sum of \$\_\_\_\_\_ as a result of the death of Reagan Edward Logue.

22. That Orval Logue has suffered damages in the sum of \$\_\_\_\_\_ as a result of the death of Reagan Edward Logue.

23. That Orval Logue is representative of the Estate of Reagan Edward Logue, is entitled to recover the sum of \$\_\_\_\_\_ for conscious pain and suffering and mental anguish of the deceased on the occasion in question and for reasonable funeral expenses incurred due to the death of said Reagan Edward Logue.

24. That the death of the said Reagan Edward Logue was not the result of an unavoidable accident.

[759]

#### CONCLUSIONS OF LAW

1. That this court has jurisdiction and venue herein pursuant to 28 U.S.C., Sec. 1346(b) and Secs. 2671-2680.

2. That Defendant United States owed Reagan Edward Logue a duty to provide for his safe keeping under the provisions of 18 U.S.C., Sec. 4086 and Sec. 4042(2) and (3).

3. That such duty included protecting the said Reagan Edward Logue from his own acts while he is insane or mentally disturbed.

4. That such duty was breached by the United States, acting through its employees and agents, to-wit the U. S. Marshal and the Sheriff's Deputies of

Nueces County, Texas, carrying out their duties in the arrest, incarceration and detention of the said Reagan Edward Logue.

5. That there existed such a relationship between the United States and the persons and agencies having custody of the deceased so that the negligent act of such persons and agencies is imputed to the United States.

That Plaintiffs are entitled to judgment against Defendant United States in the following amounts, to-wit: Orval Logue, individually \$ \_\_\_\_\_; Alice Marie Logue \$ \_\_\_\_\_; Orval Logue as representative of the Estate of Reagan Edward Logue, deceased, \$ \_\_\_\_\_.

Respectfully submitted,

EDWARDS & DE ANDA

By J. DE ANDA

Attorneys for Plaintiffs

[760]

DEFENDANT'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

FINDINGS OF FACT

(Caption Omitted)

(Filed January 25, 1971)

1. On May 22, 1968, Reagan Edward Logue was arrested by Deputy United States Marshal Del W. Bowers in Corpus Christi, Texas, on a bench warrant issued by Judge Ben A. Connally charging the said Reagan Edward Logue with conspiracy to smuggle 229 pounds of marijuana into the United States.

2. Upon such arrest Reagan Edward Logue was placed in the Nueces County Jail as a federal prisoner.

3. During the above-mentioned times there was a Contract For Service in Nonfederal Institution between Defendant United States of America and Nueces County, Texas, whereby the Sheriff of Nueces County agreed, among other things, to keep custody of federal prisoners in the Nueces County Jail at Corpus Christi, Texas.

4. At about 3:00 P.M. on May 23, 1968, Reagan Edward Logue, while a federal prisoner in the Nueces County Jail, inflicted a cut upon his left arm. Consequently, Reagan Edward Logue was transported to Memorial Hospital for treatment.

5. Reagan Edward Logue was treated at the Emergency Room of Memorial Hospital for the cut on his

arm and was subsequently admitted to said hospital upon the diagnosis of "psychotic reaction to LSD."

6. Dr. James H. White treated Reagan Edward Logue for the laceration and Dr. Shannon Gwin was the physician of Reagan Edward Logue during his hospital admission.

[761] 7. On May 24, 1968, at about 3:30 P.M., Dr. Shannon Gwin released Reagan Edward Logue from Memorial Hospital to the care of Deputy United States Marshal Del W. Bowers for the purpose of transferring Reagan Edward Logue back to the Nueces County Jail prior to his transfer to a federal mental institution pursuant to 18 USC §4244.

8. At about 4:00 P.M. on May 24, 1968, Reagan Edward Logue was transferred from Memorial Hospital to the Nueces County Jail.

9. The jail cell in which Reagan Edward Logue was put had been stripped of everything in it that could have been used by Reagan Edward Logue to hurt or injure himself. The only thing in the cell immediately prior to his being brought back that was not attached to the building was a mattress.

10. A precautionary surveillance upon Reagan Edward Logue was maintained by the Nueces County Sheriff's Department during his stay in the jail cell after his return from the hospital.

11. On May 25, 1968, at about 4:45 P.M., Reagan Edward Logue was found by a Deputy Sheriff hang-



ing by the neck with the bandages that had been used on the wound on his left arm. Reagan Edward Logue had died of the self-inflicted hanging.

12. No employee of the United States was guilty of any negligence in the performance of his duties in connection with the handling of Reagan Edward Logue.

13. No employee of the United States was guilty of any negligence that was the proximate cause of the death of Reagan Edward Logue.

14. The proximate cause of the death of Reagan Edward Logue was his own deliberate actions caused by a pre-existing mental condition.

15. A contributing cause of the death of Reagan Edward Logue was the actions of the Plaintiffs herein in failing to properly train, care for and give proper guidance to Reagan Edward Logue.

[762] 16. If a gauze pad, instead of a Kerlix bandage, had been applied to the cut in Reagan Edward Logue's arm prior to his release from the hospital, he would not have hanged himself.

17. The role of the Nueces County Sheriff's Deputy as to the United States of America in connection with the safekeeping, care and custody of Reagan Edward Logue, was that of independent contractor, and not that of employee.

18. The Nueces County Sheriff's Department fur-

nished physical facilities, personnel and related services for custodial care of prisoners of the United States of America during the times mentioned in this action, and in so doing were not supervised or controlled in the details of the service so rendered.

19. Had Reagan Edward Logue lived, he would not have provided any pecuniary benefits to the Plaintiffs herein during the remainder of his life.

### CONCLUSIONS OF LAW

1. The actions of the Deputy United States Marshals in connection with the caring for, handling, and protection of Reagan Edward Logue, were discretionary function actions within the purview of 28 USC §2680.

2. The action of contracting out the care and custody of federal prisoners in the status of Reagan Edward Logue, including specifically the said Reagan Edward Logue, to an independent contractor such as the Sheriff of Nueces County was a discretionary function within the meaning of 28 USC §2680.

3. There was no duty owed to Plaintiffs by the Deputy United States Marshals to protect Reagan Edward Logue from hanging himself while the said Reagan Edward Logue was incarcerated in the Nueces County Jail.

4. Plaintiffs are not entitled to recover any damages from Defendant United States of America because they have failed to show [763] any negligence

on the part of any employee of the United States of America acting within the course and scope of his employment.

5. Defendant United States of America has no control or authority over the general safekeeping, supervision, or control of the prisoners in the Nueces County Jail.

6. Any acts of the employees of the Nueces County Sheriff's Department, which might be deemed negligent, in connection with the safekeeping, care and custody of Reagan Edward Logue during his incarceration in the Nueces County Jail, cannot be imputed to the United States of America.

7. The United States of America cannot be held liable for any tortious acts, if any, committed by the employees of the Nueces County Jail in connection with the safekeeping, care, and custody of Reagan Edward Logue during his incarceration in said jail during the time in question.

ANTHONY J. P. FARRIS  
United States Attorney

By: GEORGE R. PAIN  
George R. Pain  
Assistant United States Attorney  
Attorneys for Defendant,  
United States of America

CERTIFICATE OF SERVICE (Omitted)

[764]

## PRE-TRIAL ORDER

(Caption Omitted)

(Filed January 26, 1971)

Pursuant to the pre-trial conference held in the above numbered cause, the following pre-trial order is entered:

## COUNSEL

Plaintiffs are represented by Edwards & DeAnda (William R. Edwards or James DeAnda) 12th Floor Wilson Building, P. O. Drawer 480, Corpus Christi, Texas 78403 (Telephone No. 882-2637, A.C. 512).

The United States of America is represented by the United States Attorney for the Southern District of Texas (George R. Pain and Jack Sheppard), P. O. Box 61129, Houston, Texas 77061 (Telephone No. 226-4765, A.C. 713).

## STATEMENT OF THE CASE

Reagan Edward Logue, eighteen years of age, died by his own hand by hanging on or about May 25, 1968, while in the custody of the Defendant (U. S. Marshal) in the Nueces County Jail, Corpus Christi, Texas.

This is a suit for damages arising from such death of Reagan Edward Logue, alleged to have been proximately caused by the negligence of the United States, Defendant, acting by and through its duly authorized agents, servants and employees, acting within the scope and course of their authority and employment as United States Marshals. This action is brought by

Orval C. Logue under the Texas Wrongful Death Act on behalf of himself as adoptive father of Reagan Edward Logue, and on [765] behalf of Alice Marie Logue, the natural mother of the deceased, and on behalf of the Estate of Reagan Edward Logue for conscious pain and suffering and mental anguish and funeral expenses.

### JURISDICTION

The parties agree that this court has full and complete jurisdiction of the subject matter and of the parties, and that venue is proper as laid.

### MOTIONS

There are no motions pending which have not been acted on as of the date of this Order.

### CONTENTIONS OF THE PARTIES

Plaintiff contends as follows:

1. Reagan Edward Logue is dead at the age of eighteen years.
2. He died by his own hand on or about May 25, 1968, by hanging, while in the custody of the Defendant in the Nueces County Jail, of Corpus Christi, Texas.
3. Orval C. Logue, age 54, is the adoptive father of Reagan Edward Logue and Alice Marie Logue, age 35, is the natural mother of Reagan Edward Logue, deceased.
4. Orval C. Logue and Alice Marie Logue are all of the persons entitled to recover under the Texas

Wrongful Death Act because of the death of Reagan Edward Logue.

5. On or about May 22, 1968, Reagan Edward Logue, deceased, was taken into federal custody and incarcerated in the Nueces County Jail, Corpus Christi, Texas, by Defendant acting by and through its agents, servants and/or employees, each and all of whom were acting within the scope and course of their authority and employment as U. S. Marshals.
- [766] 6. On or about May 23, 1968, the said Reagan Edward Logue, following a tendency known to Defendant, or, which in the exercise of reasonable care the Defendant should have known, attempted to commit suicide, and he was taken by one or more members of the Nueces County, Texas, Sheriff's Department to Memorial Medical Center, Corpus Christi, Texas, for treatment of his self-inflicted wounds.
7. Upon arrival at Memorial Medical Center, Corpus Christi, Texas, on or about May 23, 1968, the said Reagan Edward Logue was admitted to medical care in the emergency room and thereafter transferred to the psychiatric ward of the said hospital, unto the care of a trained psychiatrist and medical doctors, where he remained until on or about May 24, 1968, at which time he was removed or caused to be removed from the care of his doctors and the hospital to a cell in the Nueces County Jail by Defendant, acting by and through its duly authorized agents, servants and employees, each and all of

whom, as aforesaid, were acting within the course and scope of their authority and employment as U. S. Marshals.

8. At the time Reagan Edward Logue was removed from the care of his doctor and from the hospital as aforesaid, the Defendant, by and through its duly authorized agents, servants and/or employees, each and all of whom was acting within the scope and course of his authority and employment as U. S. Marshals, was fully apprised of the fact, or in the exercise of reasonable care should have been fully apprised of the fact, that the youth had been demonstrating suicidal tendencies, that the doctors attending the said Reagan Edward Logue [767] were concerned for his safety and were advising and pleading against removing the said Reagan Edward Logue from the hospital, and that to remove the said Reagan Edward Logue from the care of his doctors and from the care of the hospital to the Nueces County Jail, would, in reasonable probability, endanger the youngster in body and life.
9. Notwithstanding such circumstances and knowledge, with utter disregard for the safety and well-being of the said Reagan Edward Logue, without justifiable cause and in disregard of the duties imposed upon it by law, and in the face of the pleadings of the boy's mother and doctor, the said Defendant, acting by and through its duly authorized Marshals, each and all of whom were acting within the course and scope of their

employment for the Defendant, as aforesaid, removed the said Reagan Edward Logue from the care of his doctors and the hospital to the Nueces County Jail on or about May 24, 1968.

10. On or about May 25, 1968, having been so removed from the hospital to the Nueces County Jail against all medical recommendations, as aforesaid, Reagan Edward Logue did in fact succeed in taking his own life, as it had been predicted he would, using as his hangman's noose the very bandages which swathed the wounds remaining from his earlier attempt at suicide.
11. Accordingly, the death of Reagan Edward Logue, deceased, was proximately caused by acts of omission and commission on the part of the said Defendant, acting by and through its duly authorized agents, servants and employees, who were acting within the scope of their employment as U. S. Marshals, which acts and omissions, collectively [768] and severally constituted negligence, such negligence being the following:
  - (a) In removing Reagan Edward Logue from the care of his doctors and from Memorial Hospital on or about May 24, 1968, and returning him to jail contrary to the recommendations of the medical doctors attending Reagan Edward Logue.
  - (b) Alternatively, in failing to ascertain medical recommendations with reference to appropriate measures to be taken concerning the



safety and safe-keeping of Reagan Edward Logue upon his removal from the hospital.

- (c) In incarcerating Reagan Edward Logue in the Nueces County Jail on or about May 24, 1968, at a time when it knew, or in the exercise of ordinary care should have known, that to do so would endanger Reagan Edward Logue in life and body and would probably result in his death.
- (d) In failing to provide adequate supervision and surveillance of Reagan Edward Logue after he had been returned to the Nueces County Jail on or about May 24, 1968, up to the time of his death on or about May 25, 1968.
- (e) In failing to take adequate and proper precautions for the safety and well-being of Reagan Edward Logue under the circumstances while he was in the custody of the Defendant and after he had been removed from the hospital by a U. S. Marshal on or about May 24, 1968.
- (f) In failing to take adequate precautions to assure that Reagan Edward Logue would not have in his possession the means of harming or [769] killing himself after he was returned to the Nueces County Jail on or about May 24, 1968.
- (g) In leaving Reagan Edward Logue unattended in his cell.

- (h) In failing to adequately and properly advise the Nueces County, Texas, Sheriff's Department of the precautions reasonably necessary to prevent Reagan Edward Logue from taking his own life.
  - (i) Alternatively, the failure of the Sheriff's deputies acting as agents and employees of Defendant, to keep Logue under surveillance.
  - (j) In failing to provide for the safe-keeping of Reagan Edward Logue, following his arrest and during his incarceration contrary to 18 U.S.C.A., Sec. 4086 and Sec. 4042 (2) and (3).
12. That before the suicide of Reagan Edward Logue, because of his psychotic condition and suicidal tendency, he was in a position of peril and that Defendant realized that the said Reagan Edward Logue was in such position from which position of peril he could not protect himself; that Defendant's discovery and realization of such perilous position of the said Reagan Edward Logue was in time for Defendant to have avoided the occurrence in question by the exercise of ordinary care in the use of means available to Defendant consistent with Defendant's duties and without danger to Defendant nor to the public; that after such discovery and realizations said Defendant failed to exercise ordinary care in the use of the means available to avoid the occurrence in question and that such failure was a proximate cause of the occur-

rence, to-wit the death of Reagan Edward Logue by suicide.

- [770] 13. That as a matter of law, no act of Plaintiffs could be a proximate cause of the death of Reagan Edward Logue, but in any event, the acts and omissions of the Defendant above set forth, jointly and severally, were a new and independent cause of the death of Reagan Edward Logue.
14. That Plaintiff Orval Logue is entitled to damages in the amount of at least Fifteen Thousand Dollars (\$15,000.00) for loss of pecuniary benefits in money, property and/or services that such Plaintiff had a reasonable expectation of receiving from his deceased son during the life of the said Orval Logue.
15. That Plaintiff Alice Marie Logue is entitled to recover damages in the sum of Twenty-Five Thousand Dollars (\$25,000.00) for loss of pecuniary benefits in money, property and/or services that such Plaintiff had a reasonable expectation of receiving from her deceased son during the life of the said Alice Marie Logue.
16. That the Estate of Reagan Edward Logue, deceased is entitled to recover the sum of Twenty-Thousand Dollars (\$20,000.00) for conscious pain and suffering and mental anguish of Reagan Edward Logue, and for reasonable funeral expenses incurred due to the death of the said Reagan Edward Logue.

[771] Defendant contends as follows:

1. That on or about May 22, 1968, Reagan Edward Logue was arrested by a Deputy U. S. Marshal pursuant to a warrant for his arrest on a sealed indictment charging the said Mr. Logue and ten others with conspiracy to illegally smuggle into the United States 229 pounds of marijuana. At the time of this arrest, Mr. Logue was under the influence of some drug.
2. Upon the arrest of Mr. Logue, he was taken to the Nueces County Jail and was incarcerated therein.
3. On or about May 23, 1968, Reagan Edward Logue inflicted upon himself wounds and was taken from the Nueces County Jail to the Emergency Room of the Memorial Medical Center of Corpus Christi, Texas. Thereafter, Mr. Logue was transferred to the psychiatric ward of said hospital, where he remained until on or about May 24, 1968.
4. On or about May 24, 1968, the Chief of the Criminal Section of the U. S. Attorney's Office, Ronald J. Blask, in Laredo, Texas, was notified of the foregoing circumstances, and consequently conferred with the Honorable Ben C. Connally, U. S. District Judge, with regard to committing Reagan Edward Logue, deceased, to a mental institution to determine his mental competency. At that conference it was determined that such action should be taken. The order was prepared for the Court's signature and was entered the next day.

5. Pursuant to the conference with the Court of May 24, 1968, Deputy U. S. Marshal Gerald Jones, on May 24, 1968, contacted Deputy U. S. Marshal Del W. Bowers to determine if Mr. Logue could be released from the hospital and if he could be made ready for transfer to the federal mental hospital.
- [772] 6. This information was transmitted to Mr. Logue's physician who thereupon authorized Mr. Logue's release from the hospital.
7. Mr. Logue was then transferred to a cell in the Nueces County Jail to await transfer to a federal mental institution to determine his mental competency.
8. Prior to Mr. Logue's return from the hospital to the Nueces County Jail on May 24, 1968, upon instructions from Deputy Marshal Jones, certain precautions were taken to protect Mr. Logue from possible harm. Every loose object in the cell was removed, including all of the bedclothing of the bunk except the mattress. The only objects left in the cell to be occupied by deceased were those attached to the building, with the exception of the mattress. In addition, the deceased was stripped of all his clothing, except his undershorts and the bandage upon his arm, upon admission to the cell.
9. On or about May 25, 1968, while in the Nueces County Jail, Reagan Edward Logue took his own life by hanging himself with bandages put on him at the Medical Center Hospital for the

self-inflicted wounds sustained by deceased on May 23, 1968.

10. The proximate cause of the death of Reagan Edward Logue, deceased, was not due to any act or omission of an employee or agent of Defendant as alleged by Plaintiff for the following reasons:
  - (a) The deceased was removed from the Memorial Hospital on May 24, 1968, pursuant to a conference with the Court and upon the release by Mr. Logue's doctor.
  - (b) Reasonable and prudent precautions, supervision and surveillance were taken by Deputies Gerald Jones and Del Bowers in connection with the incarceration of Reagan Edward Logue in the Nueces County Jail. Reasonable steps were taken [773] prior to Mr. Logue's return to the cell by having it stripped of every loose object (except one mattress) with which Mr. Logue could hurt himself. Excess clothing was removed from Mr. Logue. Items such as cooking utensils, knives, forks, spoons, razor blades, toothbrush, were removed.
  - (c) Nueces County Jail officials and Sheriff's Department were advised by Deputy Marshall Gerald Jones of the steps to be taken to return Mr. Logue to this cell.
11. The proximate cause of the death of Reagan Edward Logue was a pre-existing mental condition for which the Deputy Marshals were not

responsible. His prior police record should have alerted his parents to the need for proper medical attention. This record includes the following:

- 12-13-62; Disturbing the Peace; released to parents
- 12-30-62; Vandalism, released to parents
- 6-16-64; Disorderly conduct; released to parents
- 4-14-66; Theft; released to Juvenile Shelter
- 2-20-67; Possession of marijuana
- 2-20-68; Possession of marijuana
- 4-02-68; Possession of LSD and marijuana
- 4-28-68; Auto theft
- 5-22-68; Conspiracy to smuggle 229 pounds of marijuana

12. A further proximate cause of death of Reagan Edward Logue was the failure of the Plaintiffs Orval Logue and Alice Marie Logue to provide the proper guidance and medical attention for their son when they knew that the circumstances clearly indicated a need for such attention. They were aware of his need for such guidance and medical attention for many years when the deceased began to deviate from a normal childhood pattern. After notice of numerous arrests, the Plaintiffs [774] herein wholly failed to provide the proper concern, guidance and medical attention for their son. Such failures by the Plaintiff were proximate causes of Reagan Edward Logue's willful act.

## ADMISSIONS OF FACT

1. That on or about June 28, 1968, the required administrative claim asserting the cause of action herein brought was properly filed and that this suit was filed more than six months following the filing of such claim, and that the United States has failed to either accept or reject said claim.
2. That Reagan Edward Logue is dead, having died by his own hand on or about May 25, 1968, at the age of eighteen years.
3. That on or about May 22, 1968, Reagan Edward Logue was taken into Federal custody and incarcerated in the Nueces County Jail by Defendant, acting by and through its agents and employees, who were acting within the scope of their employment for Defendant; that said incarceration was pursuant to bench warrant issued out of the Laredo Division of this court charging Logue with conspiracy to smuggle 229 pounds of marijuana into the United States.
4. That on May 23, 1968, while in the County Jail, Reagan Edward Logue cut himself and was taken from the Nueces County Jail to the Memorial Medical Center, a hospital in Corpus Christi, Texas; that such cutting was a self-inflicted injury for which he was treated at the hospital and that the said Reagan Edward Logue remained in the hospital until May 24, 1968, on which date he was returned to the Nueces County Jail by a Deputy U. S. Marshal.



5. That on May 25, 1968, Reagan Edward Logue hanged himself in the Nueces County Jail, using bandages which had been applied in the treatment of a self-inflicted cutting wound to his arm.

[775]     **CONTESTED ISSUES OF FACT**

1. Whether the death of Reagan Edward Logue was proximately caused by one or more acts of negligence, both of omission and commission, on the part of the said Defendant, acting by and through its duly authorized agents, servants and employees, which acts and omissions Plaintiff contends are the following:

- (a) In removing Reagan Edward Logue from the care of his doctors and from Memorial Hospital on or about May 24, 1968, and returning him to jail contrary to the recommendations of the medical doctors attending Reagan Edward Logue.
- (b) Alternatively, in failing to ascertain medical recommendations with reference to appropriate measures to be taken concerning the safety and safekeeping of Reagan Edward Logue upon his removal from the hospital.
- (c) In incarcerating Reagan Edward Logue in the Nueces County Jail on or about May 24, 1968, at a time when it knew, or in the exercise of ordinary care should have known, that to do so would endanger Reagan Edward Logue in life and body and would probably result in his death.

- (d) In failing to provide adequate supervision and surveillance of Reagan Edward Logue after he had been returned to the Nueces County Jail on or about May 24, 1968, up to the time of his death on or about May 25, 1968.
- (e) In failing to take adequate and proper precautions for the safety and well-being of Reagan Edward Logue under the circumstances while he was in the custody of the Defendant and after he had been removed from the hospital by a U. S. Marshal on or about May 24, 1968.
- [776] (f) In failing to take adequate precautions to assure that Reagan Edward Logue would not have in his possession the means of harming or killing himself after he was returned to the Nueces County Jail on or about May 24, 1968.
- (g) In leaving Reagan Edward Logue unattended in his cell.
- (h) In failing to adequately and properly advise the Nueces County, Texas, Sheriff's Department of the precautions reasonably necessary to prevent Reagan Edward Logue from taking his own life.
- (i) Alternatively, the failure of the Sheriff's deputies acting as agents and employees of Defendant, to keep Reagan Edward Logue under surveillance.
- (j) In failing to provide for the safekeeping of Reagan Edward Logue, following his arrest and during his incarceration contrary to 18 U.S. C.A., Sec. 4086.

2. Whether, before the suicide of Reagan Edward Logue, because of his psychotic condition and suicidal tendency, he was in a position of peril and whether Defendant realized that the said Reagan Edward Logue was in a position from which position of peril he could not protect himself; whether Defendant's discovery and realization of such perilous position of the said Reagan Edward Logue was in time for Defendant to have avoided the occurrence in question by the exercise of ordinary care in the use of means available to Defendant consistent with Defendant's duties and without danger to Defendant nor to the public; whether after such discovery and realizations said Defendant failed to exercise ordinary care in the use of the means available to avoid the occurrence [777] in question and whether such failure was a proximate cause of the occurrence, to-wit the death of Reagan Edward Logue by suicide.

3. Were the Sheriff's deputies and jailers acting as agents of and/or employees of the Defendant, and were such officials acting within the scope of such agency and/or employment while Logue was in their custody.

4. Whether Logue was removed from the hospital to jail contrary to medical advice.

5. If Plaintiffs or third parties were negligent, were the acts of Defendant a new and independent cause of the death of Reagan Edward Logue.

6. The amount of damages which should be awarded to Plaintiffs in the event that they are

entitled to a recovery herein, said elements of damages being as follows:

- (a) To Alice Marie Logue for loss of pecuniary benefits in money, property and/or services that she had a reasonable expectation of receiving from her deceased son during her lifetime.
- (b) The amount of damages that Plaintiff Orval Logue is entitled to recover for loss of pecuniary benefits in the money, property and/or services that he had a reasonable expectation of receiving from his deceased son during the life of the said Orval Logue.
- (c) The amount of damages the Estate of Reagan Edward Logue, deceased is entitled to recover for conscious pain and suffering and mental anguish of said deceased on the occasion in question, and for reasonable funeral expenses incurred due to the death of the said Reagan Edward Logue.

7. Whether or not the death of Reagan Edward Logue was unavoidable and resulted in spite of the exercise of reasonable care and without negligence on the part of the Defendant.

[778] Defendant contends, over Plaintiff's objections, that there are additional contested issues of fact as follows:

8. Was the attending physician of Reagan Edward Logue, while he was a psychiatric patient in the

Memorial Medical Center, guilty of negligence in releasing the said Reagan Edward Logue to the custody of the Deputy U. S. Marshal on or about May 24, 1968; and if there was negligence, was such negligence a proximate or contributing cause of the death of Reagan Edward Logue.

(Plaintiff contends that the foregoing issue is not an ultimate fact issue in that in order to bar a recovery, the negligence above alleged, and which Plaintiff denies, must be the sole proximate cause of the death).

9. Whether or not Reagan Edward Logue was guilty of willful conduct which was the sole cause or a contributing cause of his own death?

(Plaintiff contends that the foregoing issue is not relevant for the reason that under all of the evidence developed in the case, Logue was unbalanced at the time of his death and as a matter of law his acts could not be "willful"; further even if such suicidal act was "willful", it is irrelevant in a custodial situation such as is presented in this case.)

Plaintiff further objects to the foregoing issue because it is vague and indefinite and not limited to specific acts of conduct nor does such issue delineate the time or times at which such conduct occurred.

10. Whether or not the existing condition and background of Reagan Edward Logue was a proximate or contributing cause of his death?

(Plaintiff contends that the foregoing is not an ultimate fact issue in this case and that such issue

is irrelevant to the disposition of this cause; and in any event, such issue is vague and indefinite and does not apprise either the Plaintiff nor the court of specific pre-existing conditions and background to which such issue refers).

[779] 11. Whether the acts, omission, and general conduct of Plaintiff, as parents of Reagan Edward Logue, were a proximate and contributing cause of the death of Reagan Edward Logue?

(Plaintiffs contend that the foregoing issue is not an ultimate fact issue in this case and that such issue is irrelevant to the ultimate disposition of this suit; further that such issue is vague and indefinite and does not apprise either the Plaintiffs nor the court of the specific acts of conduct and the times of such acts, to which the issue relates).

### CONTESTED ISSUES OF LAW

1. If the act of Reagan Edward Logue was "voluntary", whether or not there is a duty owed to him by Defendant to protect him against his own voluntary acts?
2. If there is such a duty as indicated in the foregoing issue, is such duty owed to the Plaintiffs?
3. Whether there is a duty on the part of a jailer, under the law, to protect a prisoner who is insane or mentally disturbed, from his own voluntary acts?
4. Whether there is a duty under Title 18, U.S. C.A., Sec. 4086, on the part of the U. S. Marshal to

use reasonable care to protect a prisoner who is insane or mentally disturbed from his own acts?

5. Whether the keeper of the Nueces County Jail is an agent, employee and/or deputy of the U. S. Marshall and/or of the United States?

6. Whether there existed such a relationship by and between the Defendant and the persons and/or agencies having custody of the deceased at all times material hereto so that any negligent act of any of such persons and/or agencies which was a proximate cause of the death of the deceased is imputed to Defendant.

[780] 7. Defendant has contended as set out herein that a proximate cause of the death of Reagan Edward Logue was a pre-existing mental condition for which Defendant was not responsible. Plaintiff contends that as a matter of law such issue is not an ultimate fact issue nor a relevant issue in that it states no defense under the law.

8. Defendant further contends as set out in this pre-trial order, that a proximate cause of the death of Reagan Edward Logue was the failure of the Plaintiffs to provide proper guidance and medical attention for their son prior to the suicide and for many years before. Plaintiffs state as a matter of law such course of conduct, even if same existed, which Plaintiff deny, could not, as a matter of law, be a defense in this case and that such issue is not a relevant nor ultimate fact issue.

9. Whether or not the action of the Deputy U. S. Marshal and/or the Nueces County Sheriff's Department in connection with the caring for, handling and protection of Reagan Edward Logue were discretionary functions within the scope of 28 U.S.C., Sec. 2680.

### WITNESSES

Plaintiff may call the following witnesses to testify:

1. Marvin Foster. Mr. Foster's deposition has been taken by the Defendant. He was the lawyer representing the deceased Logue for the offense for which he was jailed on this occasion and he will testify concerning the circumstances and happenings which occurred prior to Logue's arrest, during Logue's incarceration and concerning conversations and actions which he had all witnessed of Defendant's agents.

2. Orval Logue. Mr. Logue is the adoptive father of Reagan Edward Logue and his deposition has been taken.

3. Alice Marie Logue. Mrs. Logue is the mother of Reagan Edward Logue, deceased. Her deposition has been taken by the Defendant.

[781] 4. Dr. James H. White. Dr. White was a treating physician of the deceased Logue. His deposition has been taken and all or parts thereof will be offered by the Plaintiff in evidence.

5. Dr. Shannon Gwin, a treating physician of the



Plaintiff. Dr. Gwin's deposition has been taken in this case and he will testify in accordance therewith.

6. Del Bowers. Mr. Bowers is deceased. His deposition was taken in this case and Plaintiff anticipates offering certain parts thereof.

7. Howard Vaught. Mr. Vaught is a United States Probation Officer. At the time of the occurrence, Mr. Vaught was in Corpus Christi and was present during some of the events which transpired during Mr. Logue's incarceration prior to his death, which events are relevant to the issues in this suit. Mr. Vaught is listed as a witness for the Defendant also.

Plaintiff may call some of the witnesses listed as Defendant's witnesses herein.

Defendant expects to call the below-listed witnesses:

1. Casey Slocum, First Deputy U. S. Marshal for the Southern District of Texas, Houston, Texas, has knowledge as to the instructions he gave to Deputies Jones and Bowers on or about May 24, 1968, and also about general policies of the U. S. Marshal's Office in connection with handling of prisoners.

2. Gerald Jones, Deputy U. S. Marshal, Southern District of Texas, has knowledge of his conversations with District Judge Ben C. Connally, Assistant U. S. Attorney Ronald J. Blask, Deputy Del Bowers, Marvin Foster, Tom Lowrance, and Deputy Marshal Casey Slocum on or about May 24, 1968.

3. Del Bowers. Mr. Bowers is a former Deputy U. S. Marshal who is now deceased. His deposition was taken.

4. Tom Lowrance, Chief Jailer of the Nueces County Jail on or about May 24, 1968, can recall his conversations had with Deputy Jones and Deputy Bowers and the arrangements he caused to be made at the Nueces County Jail to safely keep Reagan Edward Logue.

[782] 5. P. E. Clayton of Corpus Christi, has knowledge of the conference had between Deputy Bowers and Dr. Shannon Gwin on or about May 24, 1968.

6. Ronald J. Blask, Department of Justice Attorney, can recall his conference with U. S. District Judge Ben C. Connally in connection with committing Reagan Edward Logue to a federal mental institution for purposes of determining his competency to stand trial.

7. Frank Reyna, Nueces County Deputy Sheriff, was on guard duty at the Memorial Medical Center guarding Reagan Edward Logue on or about May 24, 1968.

8. Jack Todd, Nueces County Deputy Sheriff, was on guard duty at the Memorial Medical Center guarding Reagan Edward Logue on or about May 24, 1968.

9. W. E. Strait, Nueces County Deputy Sheriff, was on guard duty at the Memorial Medical Center

guarding Reagan Edward Logue on or about May 24, 1968.

10. Dorothy Roby, a sociology and psychology instructor at King High School in 1967 and 1968, had various contacts and knowledge of Reagan Edward Logue.

11. James L. Stone, Assistant Principal of King High School in 1968, had various contacts with Reagan Edward Logue.

12. Edith Done, Guidance Counselor at King High School in 1968, had various contacts with Reagan Edward Logue.

13. Jeff Bagwell, Identification Officer, Corpus Christi Police Department, has knowledge of the record of arrest of Reagan Edward Logue with the Corpus Christi Police Department.

14. W. L. Burch, Identification Officer, Nueces County Sheriff's Office, had knowledge of the record of arrests of Reagan Edward Logue on file with the Nueces County Sheriff's Department.

15. Mrs. Barbara Blundell, Bookkeeper, Berry Construction Co., has knowledge of the employment record of Reagan Edward Logue with that company.

[783] 16. Commander Nich Bauman, Patrol Division, Corpus Christi Police Department, can recall his contacts with Reagan Edward Logue.

17. Howard Vaught, U. S. Probation Officer, Corpus Christi, can testify to the contents of his official pre-sentence investigation records on Reagan Edward Logue.

18. Henry Griffin, U. S. Probation Officer, Waco, Texas, can testify to the contents of his official pre-sentence investigation records on Reagan Edward Logue.

19. Paul Barber, Deputy Sheriff, Nueces County in 1968, observed Reagan Edward Logue in his cell at the Nueces County Jail shortly before the said Reagan Edward Logue's death.

20. Penrod Harris, Special Agent, FBI, in his investigation, talked with Dr. James H. White and others concerning this incident.

In the event there are any other witnesses to be called, their names, addresses, and the subject matter of their testimony shall be reported to opposing counsel as soon as they are known. This restriction shall not apply to rebuttal witnesses, the necessity of whose testimony cannot be reasonably anticipated before the time of the trial.

### EVIDENCE

The Parties agree that all medical records of Memorial Medical Center may be offered and introduced in evidence without formal proof of authenticity but subject to any legal objection as to their admissibility in the trial of this case, and that prior

to such trial, the party tendering such evidence shall make available a copy of same to the other party. The foregoing stipulation applies to the order of Judge Ben Connally committing the deceased to a psychiatric facility and to the contract for services between the United States Department of Justice and Nueces County, Texas, pertaining to the use of the Nueces County Jail for the safe keeping, care, and subsistence of persons held under authority of the United States.

[784] In the event that there are other documents to be offered in evidence which are not anticipated at the time of this order, they will be tendered to opposing counsel as soon as their materiality is discovered.

That according to the United States Department of Health, Education and Welfare, vital statistics of the United States for the year 1967, a person 18 years of age has a life expectancy of 54.7 years.

Respectfully submitted,

EDWARDS & DE ANDA

By J. DE ANDA

Attorneys for Plaintiffs

UNITED STATES ATTORNEY

By GEORGE R. PAIN

Attorneys for Defendant

APPROVED this 26th day of January, 1971.

OWEN D. COX

United States District Judge

## [785] MEMORANDUM AND OPINION

(Caption Omitted)

(Filed February 17, 1971)

Reagan Edward Logue, a Federal prisoner, hanged himself in the Nueces County jail. His adoptive father, Orval C. Logue, has brought this suit under the provisions of the Federal Tort Claims Act, 28 U.S.C., § 2671, et seq, to recover damages from the government under the Texas Wrongful Death Act, Article 4671, et seq, Revised Civil Statutes of Texas (1925), as amended, for himself and for Reagan Edward Logue's mother, Alice Marie Logue, now Mrs. Blouin, and on behalf of the Estate of Reagan Edward Logue for the decedent's pain and suffering and for funeral expenses. This Court has full and complete jurisdiction of the subject matter of the parties and venue properly lies.

The Court finds the following facts surrounding the death of Reagan Edward Logue:

1. On May 22, 1968, the deceased, then eighteen years of age, was arrested by Deputy United States Marshal Del W. Bowers in Corpus Christi, Texas, on a bench warrant charging the said Reagan Edward Logue with conspiracy to smuggle 229 pounds of marijuana into the United States, and he was placed in the Nueces County jail as a Federal prisoner.

2. At about 3:00 p.m. the next day, the prisoner attempted suicide by inflicting a serious cut upon his left arm. Thereafter, he was transported from the jail

to Memorial Hospital, where he was treated for the laceration and admitted with a diagnosis that he was acutely psychotic.

[786] 3. On May 24, 1968, Deputy Marshal Bowers, after conferences with his superiors in the Marshal's Office and with Shannon Gwin, M.D., the prisoner's medical doctor, decided to return the prisoner to the Nueces County jail. Dr. Gwin recommended to the Deputy Marshal that the prisoner remain in the hospital until he could be transferred to another medical facility. At this time, the prisoner had serious suicidal tendencies and his condition was not improved over what it had been when he was admitted to the hospital the day before.

4. At about 3:30 p.m. on the same day, Dr. Gwin, because he thought he had no choice released the prisoner from the hospital to Deputy Marshal Bowers, who returned him to the Nueces County jail, pending his transfer to a Federal mental institution.

5. Deputy Bowers knew the prisoner had serious suicidal tendencies and should be protected against injuring or killing himself, and at Deputy Bowers' request, the prisoner was put in a cell which had been stripped of everything except the bunk with a mattress, the commode and wash basin. The steel walls and ceiling of the cell were symmetrically perforated with round holes about the size of a half dollar. There was no ceiling light fixture. No specific arrangements were made by the Deputy Marshal for constant surveillance of the prisoner, and this was negligence.

6. The Sheriff's employees in the jail knew the prisoner had serious suicidal tendencies, and they did make precautionary surveillance checks after his return from the hospital, but those surveillance checks were made usually in connection with bringing some other prisoner onto the floor where Reagan Edward Logue was incarcerated. This was inadequate surveillance and was negligence.

7. When the prisoner was returned to the Nueces County jail on May 24, 1968, he had a long Kerlix bandage on his arm. At about 4:30 p.m. on the afternoon of the next day he removed the bandage and hanged himself with it. Each act [787] of negligence above mentioned was a proximate cause of his death.

8. During the above-mentioned times, there was a contract for service in non-Federal institutions between Defendant United States of America and Nueces County, Texas, whereby the Sheriff of Nueces County agreed, among other things, to keep custody of Federal prisoners in the Nueces County jail at Corpus Christi, Texas. At all times material hereto, the Deputy United States Marshals involved in the arrest and detention of Reagan Edward Logue were acting within the scope of their employment for the United States government; and the members of the Sheriff's Department were acting within the scope of their employment.

The Court draws the following conclusions of law from the facts heretofore set out:



1. The decision of Deputy United States Marshal Bowers and his superiors to remove Reagan Edward Logue from the hospital to the Nueces County jail was a discretionary act within the purview of 28 U.S.C., § 2680; but, that decision having been made, the Deputy Marshal had a duty to see that reasonable care be taken at the jail to protect the prisoner against another suicidal attempt. *Smart v. United States*, 10 Cir., 207 F.2d 841; *Costley v. United States*, 5 Cir., 181 F.2d 723.

2. The government is not an insurer of the safety of its prisoner; however, once it became aware, through the knowledge of the Deputy Marshals involved, of the psychotic condition and suicidal tendencies of this prisoner, the reasonable care which the government was required to take was that care necessary to make certain the prisoner did not commit suicide while in jail. *Lange, et al, v. United States*, 179 F.Supp. 777; *United States v. Gray*, 10 Cir., 199 F.2d 239.

[788] 3. The fact that there was a contract existing between Defendant and Nueces County regarding the care and custody of Federal prisoners in the status of Reagan Edward Logue who are kept in the Nueces County jail, did not relieve the Defendant of its responsibility to such prisoners, and particularly to Reagan Edward Logue, under 18 U.S.C., § 4042. *Williams v. United States, et al*, 9 Cir., 405 F.2d 951.

4. Whether the Deputy United States Marshal failed to adequately inform the Nueces County jailer as to the necessity for constant surveillance or the

jailer failed to carry out the suggested constant surveillance needed for the protection of the prisoner, makes no difference. *Williams v. United States*, supra; *In Re Morgan*, 80 F.Supp. 810. The government was bound by those negligent acts in either instance.

5. The pre-existing mental condition of the prisoner and mistakes of the natural mother and the adoptive father in the guidance and medical attention provided for their deceased son are not pertinent. The negligence of the United States was the proximate cause of Reagan Edward Logue's death.

The Court must now determine the extent of the Defendant's liability to the Plaintiffs, and this is not an easy task. The adoptive father and the natural mother of the deceased Reagan Edward Logue may recover only the pecuniary benefits they might expect to receive. The determination of their recovery cannot be left to mere guess or conjecture, nor prompted by sympathy.

This young man was first arrested for possession of marijuana in 1967 and thereafter he was extensively involved in drug traffic, as a user and a pusher, in Corpus Christi and Austin, Texas. He had already pleaded guilty to possession of LSD for the purpose of sale in the United States District Court in Austin, Texas, but was not yet sentenced when he was arrested pursuant to an indictment in the Federal Court in [789] Laredo, Texas, for smuggling marijuana into this country. At the time of this last arrest, on May 22, 1968, he was in a serious psychotic state from the ingestion of LSD or some other toxic agent. All

conditions indicated it was extremely unlikely the deceased, had he lived, would have rendered any valuable services for the benefit of either Plaintiff, over and above their expenses, including attorneys' fees, during the remaining two and one half years of his minority.

Any pecuniary advantage to the Plaintiffs after that would obviously depend upon his rehabilitation. Both Dr. White, an intern who saw him only one time and then briefly, and the probation officer felt he could be rehabilitated. This evidence was not impressive. However, medical science continues to progress and, if the young man had lived, the Court cannot say he would not have returned to reality, and earned his own way. He did work as a boiler-maker at sixteen and seventeen years of age and was a satisfactory employee. But, whether or not he would have stayed out of trouble, or at some later date accomplished his death, his past record makes the future very uncertain.

It is also important to consider what pecuniary damages the Plaintiffs would have suffered. *Hernandez v. United States*, 313 F.Supp. 349, 364. There is little indication the adoptive father would need any appreciable pecuniary assistance. It is more likely the natural mother would someday need help. The Court finds both parents are entitled to some damages.

Suit was also brought herein on behalf of the Estate of Reagan Edward Logue, deceased, for his pain and suffering immediately prior to his death and for funeral expenses. Plaintiffs admitted in open

court that no proof had been made regarding the claim for pain and suffering. However, the estate is entitled to recover the funeral expenses.

[790] It is, therefore, ORDERED that Orval C. Logue have judgment against the United States of America in the amount of \$5,000.00, to be apportioned \$3,500.00 to Alice Marie Blouin and \$1,500 to Orval C. Logue; and the Estate of Reagan Edward Logue, deceased, takes nothing by its suit, except that it shall recover from the United States the funeral expenses in the amount of \$1,164.50.

DATED the 16th day of February, 1971.

OWEN D. COX  
United States District Judge

[791]

**NOTICE OF APPEAL**

(Caption Omitted)

(Filed May 6, 1971)

Notice is hereby given that the United States of America, Defendant above-named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment entered in this action of the 8th day of March, 1971.

Dated: May 5, 1971.

**ANTHONY J. P. FARRIS**  
United States Attorney

By: **GEORGE R. PAIN**  
George R. Pain  
Assistant United States Attorney

**CERTIFICATE OF SERVICE (Omitted)**

[792] ORDER EXTENDING TIME FOR  
TRANSMISSION OF RECORD

(Caption Omitted)

(Filed June 9, 1971)

Defendant United States of America's motion to extend time having been considered, and there being no good reason why such motion should not be granted, it is hereby

ORDERED that the time for the transmission of the record to the Court of Appeals for the Fifth Circuit is hereby extended until August 4, 1971.

DONE at Corpus Christi, Texas, this the 9th day of June, 1971.

OWEN D. COX  
United States District Judge

(Seal)

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 71-2426

---

ORVAL C. LOGUE, ETC., Plaintiff-Appellee,  
versus  
UNITED STATES OF AMERICA,  
Defendant-Appellant.

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*Appeal from the United States District Court for the  
Southern District of Texas*

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(May 1, 1972)

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Before GEWIN, AINSWORTH and SIMPSON,  
Circuit Judges.

SIMPSON, Circuit Judge: Reagan Edward Logue (hereinafter Logue), on May 25, 1968, while confined in the Nueces County, Texas, jail pursuant to a federal bench warrant, hanged himself. Suit was brought against the United States to recover damages under the Federal Tort Claims Act, Title 28, U. S. Code, Chapter 171, and the Texas Wrongful Death Act, Revised Civil Statutes of Texas, Article 4671, et seq. by the deceased's adoptive

father, Orval C. Logue, his mother, Alice Marie Logue Blouin, and by Orval C. Logue for the estate of Reagan Edward Logue. The district court after an evidentiary trial rendered judgment against the United States in the following amounts: \$3,500.00 to the deceased's mother, \$1,500.00 to Orval C. Logue and \$1,164.50 to the deceased's estate for funeral expenses.

On this appeal by the United States we find no basis for holding it liable in damages for the prisoner's death. We reverse the judgment of the district court and direct entry of judgment for the appellant.

### *THE FACTS*

The 18 year old deceased was arrested on May 22, 1968, at Corpus Christi, Texas, by Deputy United States Marshal Bowers on a federal bench warrant issued by the Laredo Division of the Southern District of Texas charging conspiracy to smuggle 229 pounds of marijuana into the United States. Deputy Marshal Bowers placed the deceased in the Nueces County jail, Corpus Christi, as a federal prisoner. That facility was used as a contract jail by the United States under the provisions of Title 18, U. S. Code, Section 4002.<sup>1</sup>

1. "§4002. Federal prisoners in state institutions; employment  
For the purpose of providing suitable quarters for the safe-keeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care and proper employment of such persons.

"Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of



About 3:00 P.M. May 23, Logue attempted suicide by cutting veins in his left arm. The wound appeared sufficiently serious for the County jailer to cause him to be taken to Memorial Hospital. There he was treated for the laceration and placed under guard in a bare room in an area of the hospital reserved for mental patients. He was seen by a psychiatrist, Dr. Shannon Gwin, and diagnosed as psychotic. There was testimony at trial that Logue also was then under the influence of an hallucinatory drug, probably LSD. Deputy Marshal Bowers sought advice from his superiors but was unable to produce a satisfactory plan to keep Logue under guard at the hospital.

On May 24, 1968, after further conferring with his superiors in the United States Marshal's Office at Laredo and at Houston and with Dr. Gwin, Deputy Marshal Bowers decided to return Logue to the Nueces County jail, despite Dr. Gwin's recommendation that the prisoner remain in the hospital until he could be transferred to another medical facility equipped to deal with his suicidal tendencies. At about 3:30 P.M. that same day, Dr. Gwin, believing that he had no choice in the matter, released Logue to Bowers, who returned him to the Nueces County jail to await processing for transfer to a federal mental institution. Bowers' trial testimony was that the decision

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the institutions of, the State or political subdivision in which they are imprisoned.

"The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons."

to move the prisoner back to the county jail was made by his superiors.

Deputy Marshal Bowers, aware of Logue's suicidal impulses, requested the Nueces County jail authorities to provide a cell stripped of items likely to prove injurious. In compliance with this request the prisoner was placed in a cell containing nothing except a bunk with a mattress, a toilet and a wash basin. Deputy Marshal Bowers made no arrangements for Logue's cell to be under constant surveillance. Neither did the jail employees undertake continuous surveillance of the prisoner. They did look in on him as they brought other prisoners to his jail floor.

Logue was returned to the Nueces County jail on May 24, wearing a long Kerlix bandage on his injured left arm. About 4:30 P.M., May 25, he removed the bandage and hanged himself with it from his cell bars.

### *THE DECISION BELOW*

The trial court found that Deputy Marshal Bowers was negligent in failing to make arrangements for constant surveillance of the deceased when he was returned to the Nueces County jail on May 24, 1968. In addition, the court below found that the employees of the jail, having actual or constructive knowledge of Logue's suicidal tendencies, were negligent in failing to place him under constant surveillance upon his return to the jail. The district court concluded that both manifestations of negligence were attributable to the United States, thereby rendering it liable in damages for the death of Reagan Edward Logue under the Federal Tort Claims Act.

### *GROUND'S ASSERTED ON APPEAL*

The United States seeks reversal of the judgment below on three grounds:

- (1) The district court erred in finding that the negligent acts and/or omissions of the employees of the Sheriff's Office in Nueces County in their handling of a federal prisoner were attributable to the United States.
- (2) The district court erred in holding that there was a duty on the part of Deputy Marshal Bowers to provide for constant surveillance of the deceased in the jail, in that to require such surveillance was patently beyond his power or authority.
- (3) The district court's finding as to the deceased's future potential and/or prospects to make a financial contribution to the individual plaintiffs is legally insufficient to support the award of damages made.

Inasmuch as we reverse the findings below as to liability, no discussion of the adequacy of the proof as to damages (ground 3 of appeal, *supra*) appears appropriate. It is unnecessary to reach that contention.

### *LIABILITY*

Relying upon the first paragraph of Title 18, U.S.C., Section 4002 (authority for the Director of the Bureau of Prisons to contract with state and local prison officials), the United States argues that the Nueces County jail was a "contractor" within the meaning of Section 2671,

Title 28, United States Code.<sup>2</sup> From this premise, it reasons that the United States is not liable under the Federal Tort Claims Act for the negligent acts and/or omissions of the Nueces County jail's employees. Additionally, the United States contends that Deputy Marshal Bowers had no authority to require the provision of constant surveillance of the deceased while the latter was confined to the Nueces County jail.

In reply, the plaintiffs argue that Deputy Marshal Bowers was under a duty imposed by Title 18, U.S.C., Section 4042,<sup>3</sup> to insure the safety and well-being of the deceased and that a breach of that duty provides the basis for a recovery from the United States under the Federal Tort Claims Act. The claim is made that in the circumstances of this case such a breach would be

2. Title 28, U.S.C., §2671:

"As used in this chapter and sections 1346(b) and 2401(b) of this title, the term 'Federal agency' includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States."

3. Title 18, U.S.C., Section 4042:

"The Bureau of Prisons, under the direction of the Attorney General, shall —

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local government in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein."

actionable whether committed by the employees of the Nueces County jail or by Deputy Marshal Bowers.

The United States is subject to suit under the Federal Tort Claims Act for injuries suffered by federal prisoners confined in federal facilities. *United States v. Muniz*, 1963, 374 U.S. 150, 83 S.Ct. 1850, 10 L.Ed.2d 805. But we agree with the United States that *Muniz* does not extend to the situation now before us, where a federal prisoner is housed in a non-federal facility pursuant to Title 18, U.S.C., Section 4002. We interpret this section as fixing the status of the Nueces County jail as that of a "contractor". Title 18, U.S.C., Sec. 2671, footnote 2, *supra*. This insulates the United States from liability under the FTCA for the negligent acts or omissions of the jail's employees. We find no support in the record for holding that Deputy Marshal Bowers had any power or authority to control any of the internal functions of the Nueces County jail. The deputy marshal, accordingly, violated no duty of safekeeping with respect to the deceased.

*Close v. United States*, D.C. Cir. 1968, 397 F.2d 686, relied upon by the appellees, is distinguishable from the case at bar. *Close* was a suit to recover damages under the FTCA for permanent disablement to the plaintiff caused by a fall in the District of Columbia jail allegedly due to defective shoes. The plaintiff was housed in the District jail (not under the jurisdiction of the United States) pending the disposition of his appeal from a conviction by the District of Columbia district court. The Court of Appeals in *Close* reversed the district court's dismissal of the complaint, holding that Congress did not intend to suspend the availability of the Federal Tort

Claims Act to a federal prisoner incarcerated in the District of Columbia jail.

The Court of Appeals in *Close* was careful to note that the United States did not claim that the District of Columbia jail was a contractor of the Federal Government within the meaning of the contractor exception of the Federal Tort Claims Act, Title 28, U.S.C., Sec. 2671, footnote 2, *supra*. As noted above, such a claim is made with respect to the county jail here involved. The D. C. Circuit also observed the special relationship existing between the Federal Government and the Government of the District of Columbia:

"We note in this regard that, for purposes of the FTCA, Congress has defined 'Employee of the [federal] government' as including 'persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation'. 28 U.S.C. § 2671. The cases have, on occasion, regarded D. C. Governmental agencies as 'federal agencies' for purposes of the FTCA, depending upon the amenability of such agencies to federal control. We are not persuaded by anything appearing in this record that the Attorney General was, in a matter of this kind, wholly lacking in any capacity to assure the proper care of a prisoner for whose custody he was primarily and permanently responsible." 397 F.2d at 687.

The judgment of the district court is reversed and the cause is remanded with directions to enter judgment for the United States.

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 71-2426

---

ORVAL C. LOGUE, ETC., Plaintiff-Appellee,  
versus  
UNITED STATES OF AMERICA,  
Defendant-Appellant.

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*Appeal from the United States District Court for the  
Southern District of Texas*

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ON PETITION FOR REHEARING AND PETITION  
FOR REHEARING EN BANC  
(Opinion May 1, 1972, 5 Cir., 1972, \_\_\_\_ F.2d \_\_\_\_).

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(July 31, 1972)

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Before GEWIN, AINSWORTH and SIMPSON,  
Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not hav-

ing voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is also DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON MORGAN, CLARK, INGRAHAM and RONEY,  
Circuit Judges.

BROWN, Chief Judge, with whom, WISDOM and GOLDBERG, Circuit Judges, join dissenting from the denial of rehearing en banc:

If a Deputy United States Marshal, after discovering a tubercular prisoner's critical physical condition, nevertheless decided to consign that individual to the custody of State authorities in a county jail without first determining whether the facilities provided adequate treatment for tuberculosis victims, and without even attempting to find out whether the conditions of confinement reasonably assured continued survival, I have difficulty believing that the Government's liability under the Federal Tort Claims Act for death resulting from lack of proper medical attention or from an unsanitary environment could be avoided with the bland assertion that the Marshal had no authority to convert the jail into a hospital. Since the facts of the present case are not materially different, I suggest that this serious and previously unresolved problem involving the care of Federal prisoners temporarily confined under contract with State officials is of sufficient importance to merit en banc reconsideration by the Court.

No one disputes that the Marshal was explicitly charged by law with an affirmative duty to provide for the safe-



keeping, care and protection of persons in his custody accused of Federal offenses. 18 U.S.C.A. § 4042. No one suggests that the Marshal was not given more than fair warning of his prisoner's unmistakably suicidal tendencies as a result of his initially unsuccessful but obviously serious attempt to take his own life. No one asserts that the Marshal made any reasonably diligent effort to assure proper supervision of the prisoner while he was confined alone in his cell or that the same tragic result would have transpired if Logue had remained in a hospital equipped to provide the necessary surveillance. The only justification advanced for overturning the District Court's finding of negligence on the part of the Marshal is the conclusion that the record provides no basis for holding that he "had any power or authority to control any of the internal functions of the Nueces County jail."

Without initiating an extensive discourse on the state of the evidence—which seems to offer at least some tangible support for the theory that the Sheriff and his deputies were subject to the Marshal's control because they frequently complied with his informal instructions or suggestions<sup>1</sup>—I need only point out that the question of the Marshal's authority to effect changes in the conditions of confinement is actually irrelevant here. The breach of the statutory duty of care occurred when Logue was confined under circumstances which the Marshal knew were inherently dangerous in the absence of special precautions, regardless of what he may or may not have been empowered to do about the situation. Once the Government undertakes performance of an act entailing a duty

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1. The panel's opinion supports this position by stating that the Nueces County authorities complied with the Marshal's request that Logue be placed in a cell stripped of all items likely to prove injurious.

of ordinary care it may not thereafter avoid liability under the Federal Tort Claims Act simply by abandoning the undertaking and attempting to attribute the responsibility to someone else. *Indian Towing Company v. United States*, 1955, 350 U.S. 61, 69, 76 S.Ct. 122, —, 100 L.Ed. 48, 56; *United States v. Gavagan*, 5 Cir., 1960, 280 F.2d 319, cert. denied, 1961, 364 U.S. 933, 81 S.Ct. 379, 5 L.Ed.2d 365.

Rather than providing for Logue's safety, the Marshal simply abandoned him, thus breaching the duty of care which, "in the case of a mental patient, \* \* \* must be reasonably adapted and proportioned to his known suicidal, homicidal, or other like destructive tendencies." *United States v. Gray*, 10 Cir., 1952, 199 F.2d 239, 242. In this respect the present case is equivalent to *Underwood v. United States*, 5 Cir., 1966, 356 F.2d 92, in which liability under the Act resulted from the Air Force's negligence in permitting a mentally deranged Airman to return to unrestricted duty and to draw from the armory a pistol he subsequently used to kill his wife. There was no suggestion that liability was contingent upon the exercise of "authority" or "control" by the Government at the time of the shooting, since liability arose only from the initial failure to utilize ordinary care. The same is true here—the Marshal's purported inability to arrange for the continuous observation of the prisoner does not excuse the earlier breach of the duty to provide a reasonably safe place of confinement.<sup>2</sup>

2. The Government attempts to distinguish *Underwood* by implying that here its statutory responsibilities were somehow "delegated to the Sheriff and his deputies. Neither the statutes nor the case law sanctions such a "delegation." *Indian Towing Company v. United States*, *supra*; *United States v. Gavagan*, *supra*.

The Court also reasons that the negligence of the State authorities in failing to keep Logue under constant scrutiny cannot be attributed to the United States because the Nueces County jail was a "contractor" within the meaning of 18 U.S.C.A. § 2671. Of course I do not dispute the axiomatic proposition that ordinarily such a "contractor" is not an "employee" for whose negligence the Government is liable under the Act. *Emelwon, Inc. v. United States*, 5 Cir., 1968, 391 F.2d 9, *cert. denied sub nom. Florida v. Emelwon, Inc.*, 393 U.S. 841, 89 S.Ct. 119, 21 L.Ed.2d 111. However, here the plaintiffs rely primarily upon that portion of the Act defining "employees" as " \* \* \* persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation." 28 U.S.C.A. § 2671. Since under the contract arrangement State authorities perform all functions incidental to the confinement of Federal prisoners that would otherwise be performed by the United States Marshal, the theory is that the Marshal's office is a "federal agency" on behalf of which State jailers act "in an official capacity, temporarily \* \* \* in the service of the United States." In effect, the Nueces County Sheriff and his deputies become surrogate Marshals for purposes of Federal tort liability.

While passing no final judgment at this stage, I do point out that this argument was barely mentioned in the panel's opinion, much less refuted by it. The Government contends that a Marshal has no authority to appoint a State law enforcement officer to act on behalf of or in the service of the United States, yet under the literal wording of the statute the absence of such authority would appear to be irrelevant. Moreover, when the Government decides

that a particular individual should assume obligations and responsibilities virtually identical to those of a salaried Federal employee, there may very well be some persuasive basis for the suggestion that such an individual's breach of a specific statutory duty owed by the salaried employee to a specific class of persons should visit identical liability upon the United States. Obviously there is more than a subtle distinction between a "contractor" who breaches a duty of reasonable care owed to the world at large and a "contractor" who performs specific custodial functions that under a plain Congressional mandate would ordinarily entail a definite obligation of due care owed to a discrete (and particularly vulnerable) class of people. If only for the sake of uniformity and the avoidance of formalistic legal distinctions totally divorced from the realities of the situation, further consideration of the problem might inevitably lead to the conclusion that the Sheriff and his deputies were "employees" within the meaning of the Act, particularly in light of the principle that "the Government's liability is no longer restricted to circumstances in which government bodies have traditionally been responsible for misconduct of their employees. The Act extends to novel and unprecedented forms of liability as well." *United States v. Muniz*, 1963, 374 U.S. 150, 159, 83 S.Ct. 1850, \_\_\_, 10 L.Ed.2d 805, 813. As has long been recognized, "the Federal Tort Claims Act waives the Government's immunity from suit in sweeping language." *United States v. Yellow Cab Company*, 1951, 340 U.S. 543, 547, 71 S.Ct. 399, \_\_\_, 95 L.Ed. 523, 528.

Apart from the difficulties posed by this case in isolation, its implications within the broader context of modern-day prison administration are even more disturbing.

Overcrowding and substandard physical facilities inevitably have a progressively detrimental impact on the administrator's ability to insure the health, safety and welfare of those in his custody. Increasingly we are being forced to confront undeniable evidence that the inmates of many institutions routinely subject other prisoners to varieties of subhuman treatment that no citizen of a civilized nation, whatever his transgression against society, should be compelled to endure. That such outrages are inflicted upon those serving sentences following conviction is disgraceful. But when the victim charged with a Federal offense is merely confined temporarily in a State jail while awaiting transfer or release on bond, I hardly think we provide an acceptable answer when we tell him or his family that restitution for death or injury resulting from his custodian's culpable neglect is unavailable because the responsible official was wearing a State rather than a Federal badge. In such circumstances I cannot concede that despite the constable's blunder the Government must go free.

I dissent from the denial of rehearing en banc.

OCT 28 1972

MICHAEL RUBAK, JR., C

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM 1972

NO. **72-656**

ORVAL C. LOGUE, individually and as personal  
representative of his deceased son, Reagan Logue,  
and ALICE MARIE BLOUIN, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

PHILIP K. MAXWELL  
JAMES DEANDA  
EDWARDS & DEANDA  
12th Floor, Wilson Building  
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*Attorneys for Petitioners*

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM 1972

\_\_\_\_\_  
NO. \_\_\_\_\_  
\_\_\_\_\_

ORVAL C. LOGUE, individually and as personal  
representative of his deceased son, Reagan Logue,  
and ALICE MARIE BLOUIN, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

\_\_\_\_\_

Orval C. Logue, individually and as personal representative of his deceased son, Reagan Logue, and Alice Marie Blouin, the natural mother of Reagan Logue, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit dated May 1, 1972. Petitions for Rehearing and for Rehearing En Banc were denied on July 31, 1972, with Brown, Chief Judge, and Wisdom and Goldberg, Circuit Judges, filing an opinion dissenting from the denial of rehearing en banc.

## OPINIONS BELOW

The district court's memorandum opinion (Appendix A, *infra*, p. 21), awarding Petitioners recovery under the Federal Tort Claims Act, is reported at 334 F.Supp. 322. The opinion of the court of appeals (Appendix B, *infra*, p. 28) is reported at 459 F.2d 408, and the opinion dissenting from the denial of rehearing en banc (Appendix C, *infra*, p. 36) is reported at 463 F.2d 1340.

## JURISDICTION

The judgment of the court of appeals was entered on July 31, 1972. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED

This case presents the issue whether the United States government may exempt itself from liability under the Federal Tort Claims Act for injuries negligently caused to a federal prisoner, by relinquishing supervision over the prisoner to a local county jail pursuant to a contract providing for housing federal prisoners in the jail.

## STATUTES INVOLVED

The pertinent provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671) are set forth in Appendix D, *infra*, p. 43). The statute imposing on the United States the duty to safely keep, care for, and protect federal prisoners (18 U.S.C. § 4042) is reproduced in Appendix E, *infra*, p. 45. The statute authorizing the United States to contract with non-federal governmental authorities for the detention of federal prisoners (18 U.S.C. § 4002) is set forth in Appendix F, *infra*, p. 47.

## STATEMENT

The deceased, Reagan Logue, was arrested by a Deputy United States Marshal on a bench warrant charging him with conspiracy to smuggle marijuana into the United States, and was placed by the Deputy Marshal in the Nueces County jail as a federal prisoner. While so incarcerated the prisoner attempted suicide by inflicting a serious cut on his left arm. Thereafter, he was transported from the jail to a local hospital, where he was treated for the laceration and diagnosed as acutely psychotic.

Despite doctors' recommendations that the prisoner remain in hospital until he could be transferred to another medical facility, the Deputy Marshal returned the prisoner to the jail, where he was placed, at the Deputy Marshal's request, in a cell stripped of everything but a bunk bed, commode and wash basin. The Deputy Marshal, however, made no specific arrangements for constant surveillance of the prisoner, although he knew the prisoner had serious suicidal tendencies and should be protected against injuring or killing himself. The jail employees also knew the prisoner had serious suicidal tendencies, but their surveillance was mainly limited to checking on the prisoner when they happened to be bringing another prisoner onto the same floor of the jail. During one of the periods between these random checks, the prisoner removed the long Kerlix bandage that bound the wound from his first suicide attempt and hanged himself with it.

The district court held that the Deputy U. S. Marshal was negligent in failing to make specific arrangements for constant surveillance of the prisoner, that the jail employees were negligent in failing to keep the prisoner under constant surveillance, and that the United States

government was liable for both these acts of negligence under the Federal Tort Claims Act. The court of appeals reversed, holding that (a) the Deputy Marshal had no authority or power to control the internal functions of the Nueces County jail and, therefore, had no duty to make specific arrangements for the prisoner's constant surveillance; and that (b) 18 U.S.C. § 4002, authorizing the United States to contract with non-federal governmental authorities for the detention of federal prisoners, fixed the status of the Nueces County jail as that of a "contractor", thereby insulating the United States from liability for the negligence of the jail's employees under the Federal Tort Claims Act, 28 U.S.C. § 2671. Chief Judge Brown, with whom Circuit Judges Goldberg and Wisdom joined, filed an opinion dissenting from the denial of rehearing en banc in which he questioned the reasoning of the court of appeals on the merits and stated his belief that the importance of the issues raised in the case warranted en banc reconsideration by the court.

### **REASONS FOR GRANTING THE WRIT**

- I. Whether the United States may exempt itself from liability under the Federal Tort Claims Act for injuries negligently caused to a federal prisoner, by relinquishing supervision over the prisoner to a local county jail pursuant to a contract providing for housing of federal prisoners in the jail, is an important question of federal law which has not been, but should be, settled by this Court.**

This Court held in *United States v. Muniz*, 374 U.S. 150 (1963) that federal prisoners were entitled to sue

under the Federal Tort Claims Act for personal injuries sustained during confinement in prison by reason of the negligence of government employees. Such suits could be maintained, said the Court, even if the law of the state in which the tort occurred immunized jailers from suit by their prisoners, since the duty of care owed by the government to federal prisoners is fixed by 18 U.S.C. § 4042, independent of an inconsistent state rule. *United States v. Muniz, supra*, 374 U.S. at 163-165. The Court noted that under the Act the government was not without defenses to suits by federal prisoners, but expressly declined to "... intimate any opinion upon their applicability to these complaints, since no such issue is presented for our review." *United States v. Muniz, supra*, 374 U.S. at 163. Thus the issue presented in the instant case—whether a federal prisoner may bring a Federal Tort Claims action against the United States government for negligently caused injuries sustained while he is confined in a local jail pursuant to a contract between the government and the jail—was left undecided by *Muniz*. It is an issue of national importance to the criminal justice system administered by the federal government. Like the fundamental issue resolved in *Muniz*, it is an issue that must be decided by this Honorable Court.

Published statistics are unavailable, but it is estimated that the Bureau of Prisons has an average of 800 contracts with state and local jails to provide housing for federal prisoners.<sup>1</sup> While these "contract jails" hold very

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1. The statistics and estimates relating to federal prisoners and to the number of federal contracts with local jails were given to counsel for Petitioners by the Office of the General Counsel, Federal Bureau of Prisons. According to that office, however, the information was actually provided by the Bureau's Division of Community Services.

few of the federal prisoners who have been tried and sentenced,<sup>2</sup> they hold the overwhelming majority of those who are "pre-trial detainees"—persons arrested and detained in connection with federal offenses. Again, published data is lacking, but the Bureau of Prisons estimates that on any given day there is an average of 4,000 unsentenced federal prisoners in non-federal facilities. This figure stands in sharp contrast to the number of unsentenced federal prisoners in federal facilities: 652 for the week ending August 10, 1972.<sup>3</sup> With the dockets of the federal courts becoming increasingly more congested, there is little doubt that the number of unsentenced federal prisoners in local jails will steadily rise in the future. The point to be made, of course, is that the United States government has made the "contract jail" a necessary and apparently permanent part of the federal criminal justice system, and that the number of persons affected by the decision to deny federal prisoners in those jails the right to the statutory duty of care of 18 U.S.C. § 4042 and the FTCA remedy for its breach is substantial. A decision of this magnitude must be made by the highest court in the land.

But there is a deeper, fundamentally moral reason why the Court should hear this case, and that is that the conditions to which the federal government subjects its prisoners when it turns them over to local jails are, as a general rule, abhorrent. In case after case, both federal and state courts are finding that the treatment of prisoners in

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2. The number of sentenced federal prisoners in non-federal facilities in September, 1972, was reported to be only 246 (173 women, 33 men, and 40 juveniles).

3. See "Federal Prisoners Confined Week Ended 08/10/72", provided by the Federal Bureau of Prisons' Community Services Division through the Bureau's Office of General Counsel, Appendix G, *infra*, p. 50.



local jails violates basic standards of human decency.<sup>4</sup> Overcrowding, inadequate supervision, no separation from dangerous and contagiously ill prisoners, substandard medical care, exposure to extreme temperatures, unsanitary kitchen and bathing facilities, and the risk of loss of life from fire are among the several outrages that the courts have found to constitute cruel and unusual punishment

4. See e.g., *Brenneman v. Madigan*, 343 F. Supp. 128 (N.D. Cal. 1972) (Alameda County, California); *Hamilton v. Love*, 328 F. Supp. 1182 (E.D. Ark. 1971) (Pulaski County, Arkansas); *Jones v. Wittenberg*, 323 F. Supp. 93 (N.D. Ohio 1971), *aff'd. sub. nom.*, *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972) (Lucas County, Ohio); *Hamilton v. Schiro*, 338 F. Supp. 1016 (E.D. La. 1970) (Orleans Parish, Louisiana). *Bryant v. Hendrick*, (Phila. C.P.) *aff'd.*, 280 A.2d 110 (Pa. Sup. Ct. 1971). For a summary of the lower court opinion in *Bryant* see 7 Crim. L. Rep. 2463. See also, *Jackson v. Hendrick*, (Phila. C.P. 1972) summarized in 40 U.S.L.W. 2710 (May 2, 1972), *on appeal*, No. 576CD 1972, in the Commonwealth Court of Pennsylvania.

Inquiries made of the attorneys for the plaintiffs in the foregoing cases revealed that federal prisoners are presently housed in Pulaski County Jail in Little Rock (*Hamilton v. Love*, *supra*), and in Orleans Parish Jail in New Orleans (*Hamilton v. Schiro*, *supra*), although they have been removed to an annex in the latter instance. Apparently as the result of the litigation in *Jones v. Wittenberg*, *supra*, the Lucas County Sheriff is presently refusing to accept federal prisoners in the Lucas County Jail, Toledo, Ohio. All federal prisoners are now housed in nearby Adrian, Michigan and transported to Toledo for federal court appearances. Despite the conditions found to exist in the Dallas County Jail (*Taylor v. Sterrett*, *infra*, note 5), federal prisoners are still kept in that facility. At the direction of the district court in *Brenneman v. Madigan* in March, 1971, the U.S. Marshal stopped placing federal prisoners in the Greystone section of Alameda County's Santa Rita Rehabilitation Center. Improvements have been made in that facility, however, and federal prisoners are again housed therein. Federal prisoners were withdrawn from Holmsberg jail, Philadelphia County, (*Bryant v. Hendrick*, *supra*), after the prisoner riot in July, 1970. Federal prisoners are still housed in Philadelphia's Detention Center and House of Correction (*Jackson v. Hendrick*, *supra*), although nearby state penal institutions are also used.



and a denial of due process and equal protection of the laws.<sup>5</sup> Such conditions are even more contemptible as they apply to those merely charged with crime, since the governmental interest in punishing criminal offenders, which might arguably justify some of the conditions found in the jails, is inapplicable to the treatment of persons whose guilt has not been proved.<sup>6</sup> As has been seen, the great bulk of the federal prisoners placed in these jails are in this category. According to the evidence developed in the instant case, the federal government does not require that its prisoners be separated from the state prisoners or that

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5. Recently, a federal district court in Texas held that the conditions in the Dallas County jail violated the Texas statute detailing the minimum requirements for "safe and suitable jails" in the state. *Taylor v. Sterrett*, 344 F. Supp. 411 (N.D. Tex. 1972). The plaintiffs also challenged the constitutionality of the conditions, but the court chose to base its decision on Article 5115, Texas Revised Civil Statutes. While the conditions of the Nueces County jail, where the prisoner in the instant case was held, have not been the subject of litigation, they are certainly no better than those in the Dallas County jail. For a description of current conditions in the Nueces County jail, see McKinney, *Nueces Facility—trying experience for jailed, jailers*, *The Corpus Christi Caller-Times*, October 1, 1972, § A, at 6, col. 5, noting, *inter alia*, the increased burden placed on the jail by the rising number of illegal aliens detained there by the federal government. Appendix H, *infra*, p. 48.

6. In *Hamilton v. Love*, *supra*, note 4, 382 F. Supp. at 1191, the court noted that the lot of those detained while awaiting trial appeared to be worse than that of those convicted and serving their sentences in the Arkansas state penitentiaries. The full impact of this observation cannot be felt until it is remembered that conditions in the Arkansas state penitentiaries have been found to violate the Eighth Amendment. *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971). For a discussion of the pretrial detainee problem see, Note, *Incarcerating the Innocent: Pretrial Detention in Our Nation's Jails*, 21 *Buff. L. Rev.* 891 (1972); Note, *Constitutional Limitations on Conditions of Pretrial Detention*, 79 *Yale L.J.* 941 (1970).

they be given any special treatment.<sup>7</sup> In short, the federal government each day relinquishes the supervision of thousands of persons whose guilt of any crime has not been established to local facilities which are woefully inadequate even for the state prisoners they must house. And, according to the Court of Appeals for the Fifth Circuit, once the United States government surrenders physical custody of a federal prisoner to such a facility it extinguishes its liability for whatever harm might befall that prisoner afterwards. Whether, as a matter of public policy and good conscience, this should be the law is a question that demands the attention of this Honorable Court.

In his opinion dissenting from the denial of rehearing en banc, in which Circuit Judges Goldberg and Wisdom joined, Chief Judge Brown posed the fundamental question in this case by way of analogy.

If a Deputy United States Marshal, after discovering a tubercular prisoner's critical physical condition, nevertheless decided to consign that individual to the custody of State authorities in a county jail without first determining whether the facilities provided adequate treatment for tuberculosis victims, and without even attempting to find out whether the conditions of confinement reasonably assured continued survival, I have difficulty believing that the Government's liability under the Federal Tort Claims Act for death resulting from lack of proper medical attention or from an unsanitary environment could

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7. Testimony of Gerald L. Jones, Supervisory Deputy U.S. Marshal for the Southern District of Texas. See printed appendix of the record in this case, volume II, at 386-387.

[T]he Bureau of Prisons would frown very muchly [sic], very muchly [sic] so, if he [a federal prisoner] received any better treatment than any other prisoner in the jail, whether it be federal, state, county.  
App., Vol. II at 387.

be avoided with the bland assertion that the Marshal had no authority to convert the jail into a hospital. Since the facts of the present case are not materially different, I suggest that this serious and previously unresolved problem involving the care of Federal prisoners temporarily confined under contract with State officials is of sufficient importance to merit *en banc* reconsideration by the Court.<sup>7a</sup>

For the same reason, the decision of the court of appeals should be reviewed by this Court.

**II. The decision of the Court of Appeals for the Fifth Circuit conflicts with decisions of this Court, and with decisions of the courts of appeal for the District of Columbia, Second and Tenth circuits.**

**A. The negligence of the Marshal.**

Section 4042 of Title 18, United States Code, declares that the Bureau of Prisons, under the direction of the Attorney General, shall provide, *inter alia*, for the quartering, safekeeping, care, and protection of all persons charged with or convicted of offenses against the United States.<sup>8</sup> As Judge Brown pointed out in his opinion dissenting from the denial of rehearing *en banc*, no one disputed that this statute explicitly charged the Marshal with the affirmative duty to provide for the safekeeping, care and protection of persons, like Reagan Logue, who were accused of federal offenses.<sup>9</sup> No one suggested that the Marshal lacked knowledge of the prisoner's serious suicidal tendencies, or that the Marshal made any reasonably

7a. Appendix C, *infra*, at p. 36.

8. For the full text of 18 U.S.C., See 4042, Appendix E, *infra*, p. 45.

9. See, Appendix C, *infra*, at p. 36.

diligent effort to assure proper supervision of the prisoner while he was confined alone in his cell, or that the same tragic result would have occurred even had the prisoner remained in a hospital equipped to provide the necessary surveillance. The only justification advanced by the court of appeals for overturning the district court's finding of negligence on the part of the Marshal is the conclusion that the record provides no basis for holding that he "had any power or authority to control any of the internal functions of the Nueces County jail."<sup>10</sup>

Judge Brown's dissenting opinion correctly points out that the Marshal's ability to control the internal functions of the jail is immaterial to his duty under 18 U.S.C. §4042 to care for and protect federal prisoners.

Without initiating an extensive discourse on the state of the evidence—which seems to offer at least some tangible support for the theory that the Sheriff and his deputies were subject to the Marshal's control because they frequently complied with his informal instructions or suggestions—I need only point out that the question of the Marshal's authority to effect changes in the conditions of confinement is actually irrelevant here. The breach of the statutory duty of care occurred when Logue was confined under circumstances which the Marshal knew were inherently dangerous in the absence of special precautions, regardless of what he may or may not have been empowered to do about the situation. Once the Government undertakes performance of an act entailing a duty of ordinary care it may not thereafter avoid liability under the Federal Tort Claims Act simply by abandoning the undertaking and attempting to attribute the responsibility to someone else. *Indian Towing Company v. United States*, 1955, 350

10. See, Appendix B, *infra*, at page 34.

U.S. 61, 69, 76 S.Ct. 122, —, 100 L.Ed. 48, 56; *United States v. Gavagan*, 5 Cir., 1960, 280 F.2d 319, *cert. denied*, 1961, 364 U.S. 933, 81 S.Ct. 379, 5 L.Ed.2d 365.

Rather than providing for Logue's safety, the Marshal simply abandoned him, thus breaching the duty of care which, "in the case of a mental patient, \* \* \* must be reasonably adapted and proportioned to his known suicidal, homicidal, or other like destructive tendencies." *United States v. Gray*, 10 Cir., 1952, 199 F.2d 239, 242.<sup>11</sup>

The instant case presents a stronger argument for government liability than either *Indian Towing* or *Gray*, since here the United States was under a specific, *statutory* duty of care to *all* federal prisoners, regardless of their physical location. If a judicial exception is to be read into 18 U.S.C. §4042 to exclude federal prisoners held in state and local county jails, it should be done by this Court only after careful consideration of the consequences of such a decision.

#### **B. The negligence of the Nueces County jailers.**

The court of appeals has also held that the negligence of the state jailers in failing to keep Logue under constant scrutiny cannot be attributed to the United States because the Nueces County jail was a "contractor" within the meaning of 18 U.S.C. 2671. This holding ignores the remainder of the definition of "employee of the government" in that section and conflicts with the Second Circuit's decision in *Witt v. United States*, 462 F.2d 1261 (2d Cir. 1972) and District of Columbia Circuit's decision

11. See, Appendix C, *infra*, at pages 39-40.

in *Close v. United States*, 397 F.2d 686 (D.C. Cir. 1968). Furthermore, since the decision of the court of appeals creates a judicial exception to the Federal Tort Claims Act—federal prisoners being held in non-federal facilities—the decision is contrary to this Court's decisions in *Rayonier, Inc. v. United States*, 352 U.S. 315 (1957), and in *United States v. Muniz*, 374 U.S. 150 (1963).

Even if it is assumed that the Nueces County jail is a "contractor" under the FTCA, that it not determinative of the United States liability for the negligence of the jail's employees. The Act's definition of an "employee of the government" includes not only "officers or employees of any federal agency" (the definition of which excludes "any contractor"), but also includes "*persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation.*" 28 U.S.C. §2671 (1964) (emphasis added). It is difficult to conceive of any situation more appropriate than that presented in the instant case for the application of this latter portion of the statutory definition of government employee. That the Nueces County jailers were acting as federal jailers vis-a-vis Reagan Logue is quite obvious. This was precisely the reason why the District of Columbia Circuit held the United States liable under the FTCA for an injury to a federal prisoner temporarily being held in the D. C. jail at the direction and for the convenience of the United States. *Close v. United States*, 397 F.2d 686 (D.C. Cir. 1968).

*Since the Congress has clearly committed the custody of and safekeeping of federal prisoners upon conviction to the Attorney General, then it must be true that in this instance the D. C. jailer was serving as*



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*the Attorney General's jailer; and it must also be true, or at least it does not appear to the contrary in the record before us, that as to this federal prisoner, the Attorney General had some degree of power, commensurate with his continuous responsibility to supervise the D. C. jailer and his handling of this particular prisoner. We note in this regard that, for the purposes of the FTCA, Congress has defined "Employee of the [federal] government" as including "persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the services of the United States, whether with or without compensation." 28 U.S.C. §2671. 397 F.2d at 687. (emphasis added).*

Citing the *Close* case, the Second Circuit recently held in *Witt v. United States, supra*, that the United States was liable under the Federal Tort Claims Act for breach of its statutory duty of care to a federal military prisoner under 10 U.S.C. 951(c),<sup>12</sup> even though the injury to the prisoner was caused solely by the negligence of a private person who had physical custody of the prisoner for purposes of having him perform work which the negligent party had contracted to do for a private association of military personnel.

The court rejected the government's argument that "[w]hen Witt [the injured prisoner] climbed into the [private tortfeasor's] trailer, the responsibility of the Disciplinary Barracks for him stood at the curbside."

"We take a different view. On the day of the accident, the Commandant of the Disciplinary Barracks had "custody of all offenders sent there" and was under a duty to "control and employ offenders as he considers best for their health and reformation . . ."

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12. Formerly 10 U.S.C. § 3661 (repealed in 1968).



*Such a duty may not be absolutely non-delegable, as Witt asserts, but in our view, the duty is an important and broad one. It should not be sidestepped simply by having McQuirk [the private tortfeasor] rather than a permanent employee or an enlisted man transport the prisoners and similarly the duty should not be affected because a particular work detail was "voluntarily" chosen in lieu of other regular work assignments." Witt v. United States, supra, 462 F.2d at 1265. (emphasis added).*

As in *Close* and *Witt*, the United States was under an affirmative statutory duty in the instant case to care for and protect their prisoners. Petitioners submit that 18 U.S.C. § 4042 is an absolutely nondelegable duty that cannot be avoided by the relinquishment of supervision over a federal prisoner, especially where the person or governmental entity to which supervision is relinquished is clearly acting on behalf of the United States in an official capacity.<sup>13</sup> Judge Brown pointed out that:

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13. The Court should also note the decision of the Ninth Circuit in *Williams v. United States*, 405 F.2d 951 (9th Cir. 1969) affirming the dismissal of a federal prisoner's cause of action based on 18 U.S.C. § 4042 against the county officials on the grounds that that statute created a cause of action only against the United States. On remand the district court held, as did the court of appeals in the instant case, that the United States could not be held liable for the negligence of the county officials, since the county was a "contractor." *Williams v. United States*, Civil No. 3241-SD-S, Southern District of California, April 1, 1971. Counsel for Petitioners herein has been informed that the appeal of that decision has been dismissed. For a case that questions the reasoning of the district court's opinion in *Williams*, see *Brown v. United States*, 342 F. Supp. 987, 997-998 (E.D. Ark. 1972), involving an injury to a federal prisoner while he was held in the Pulaski County Jail in Little Rock, Arkansas. Recall that the conditions in the Pulaski County Jail were held violative of the Eighth and Fourteenth Amendments in *Hamilton v. Love*, 328 F. Supp. 1182 (E.D. Ark. 1971). See note 4, *supra*, and accompanying text.

when the Government decides that a particular individual should assume obligations and responsibilities virtually identical to those of a salaried Federal employee, there may very well be some persuasive basis for the suggestion that such an individual's breach of a specific statutory duty owed by the salaried employee to a specific class of person should visit identical liability upon the United States. *Obviously there is more than a subtle distinction between a "contractor" who breaches a duty of reasonable care owed to the world at large and a "contractor" who performs specific custodial functions that under a plain Congressional mandate would ordinarily entail a definite obligation of due care owed to a discrete (and particularly vulnerable) class of people.* If only for the sake of uniformity and the avoidance of formalistic legal distinctions totally divorced from the realities of the situation, further consideration of the problem might inevitably lead to the conclusion that the Sheriff and his deputies were "employees" within the meaning of the Act, particularly in light of the principle that "the Government's liability is no longer restricted to circumstances in which government bodies have traditionally been responsible for misconduct of their employees. The Act extends to novel and unprecedented forms of liability as well." *United States v. Muniz*, 1963, 374 U.S. 150, 159, 83 S.Ct. 1850, —, 10 L.Ed.2d 805, 813. As has long been recognized, "the Federal Tort Claims Act waives the Government's immunity from suit in sweeping language." *United States v. Yellow Cab Company*, 1951, 340 U.S. 543, 547, 71 S.Ct. 399, —, 95 L.Ed. 523, 528 (emphasis added).<sup>14</sup>

In addition, the decision of the court of appeals denying the FTCA remedy to federal prisoners in state jails is clearly offensive to the principle announced by this

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14. Appendix C, *infra*, at p. 41.

Court in *Rayonier, Inc. v. United States* and reaffirmed in *United States v. Muniz*:

There is no justification for this Court to read exemptions into the Act beyond those provided by Congress. If the Act is to be altered that is a function for the same body that adopted it. *United States v. Muniz*, 374 U.S. 150, 166 (1963).

It would truly be anomalous if the court of appeals decision immunizing the United States from liability for injuries to its own prisoners to whom it owes a statutory duty of care is allowed to stand unreviewed at a time when judicial impatience with the doctrine of sovereign immunity has led to its abrogation or dilution by judicial decision in state after state.<sup>15</sup>

15. See e.g., *Stone v. Arizona Highway Commission*, 93 Ariz. 384, 381 P.2d 107 (1963); *Parish v. Pitts*, 244 Ark. 1239, 429 S.W.2d 45 (1968); *Muskopf v. Corning Hospital District*, 55 Cal. 2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961); *Proffitt v. State of Colorado*, 482 P.2d 965 (Colo. 1971); *Hargrove v. Town of Cocoa Beach*, 96 So.2d 130 (Fla. 1957); *Smith v. Idaho*, 93 Idaho 795, 473 P.2d 937 (1970); *Molitor v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11, 163 N.E.2d 89 (1959); *Campbell v. State*, 284 N.E.2d 733 (Ind. 1972); *Carroll v. Kittle*, 203 Kan. 841, 457 P.2d 21 (1969); *Haney v. City of Lexington*, 386 S.W.2d 738 (Ky. 1964); *Williams v. City of Detroit*, 364 Mich. 231, 11 S.W.2d 1 (1961); *Spanel v. Mounds View School District*, 264 Minn. 279, 118 N.W.2d 795 (1962); *Brown v. City of Omaha*, 183 Neb. 430, 160 N.W.2d 805 (1968); *Rice v. Clark County*, 79 Nev. 253, 382 P.2d 605 (1963); *McAndrew v. Mularchuk*, 33 N.J. 172, 162 A.2d 820 (1960); *Barker v. City of Santa Fe*, 47 N.M. 85, 136 P.2d 480 (1943); *Becker v. Beaudoin*, 261 A.2d 896 (R.I. 1970); *Honaman v. City of Philadelphia*, 322 Pa. 535, 185 A. 750 (1936); *Holytz v. City of Milwaukee*, 17 Wis. 2d 26, 115 N.W.2d 618 (1962); see also, *Krause v. Ohio*, 28 Ohio App. 2d 1, 274 N.E.2d 321 (1971) holding the doctrine of sovereign immunity constitutionally infirm under the Equal Protection Clause. The decision, however, was reversed by the Ohio Supreme Court, 7/19/72. See summary of opinion in 41 U.S.L.W. 2073 (Aug. 8, 1972).

But again, it is the manifest unfairness of allowing the United States to stand immune to liability for injuries to federal prisoners in local lockups that compels that this case be considered by the Court. And again, it is the language of Judge Brown, with which Judges Goldberg and Wisdom agreed, that best makes the point.

Apart from the difficulties posed by this case in isolation, its implications within the broader context of modern-day prison administration are even more disturbing. Overcrowding and substandard physical facilities inevitably have a progressively detrimental impact on the administrator's ability to insure the health, safety and welfare of those in his custody. Increasingly we are being forced to confront undeniable evidence that the inmates of many institutions routinely subject other prisoners to varieties of subhuman treatment that no citizen of a civilized nation, whatever his transgression against society, should be compelled to endure. That such outrages are inflicted upon those serving sentences following conviction is disgraceful. But when the victim charged with a Federal offense is merely confined temporarily in a State jail while awaiting transfer or release on bond, I hardly think we provide an acceptable answer when we tell him or his family that restitution for death or injury resulting from his custodian's culpable neglect is unavailable because the responsible official was wearing a State rather than a Federal badge. In such circumstances I cannot concede that despite the constable's blunder the Government must go free.<sup>16</sup>

### CONCLUSION

Because of the important questions of national policy raised in this case regarding the United States' responsi-

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16. Appendix C, *infra*, at p. 42.

bility to federal prisoners held in non-federal facilities, because of the clear conflict between the circuits on this issue, and because the Fifth Circuit's narrow reading of the Federal Tort Claims Act runs counter to this Court's previous interpretations of the Act, it is clear that this Court should review the decision of the United States Court of Appeals for the Fifth Circuit.

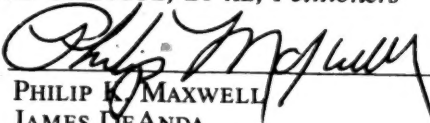
### PRAYER

Wherefore, premises considered, Petitioners respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

ORVAL C. LOGUE, ET AL, *Petitioners*

By:

  
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**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing has been mailed on this 27 day of October, 1972, to Mr. William L. Bowers, Jr., Assistant United States Attorney, P. O. Box 61129, Houston, Texas 77061, and Richard Kleindienst, United States Attorney General, Department of Justice, Washington, D.C.



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**APPENDIX "A"**

**IN THE  
DISTRICT COURT OF THE UNITED STATES  
For The Southern District Of Texas  
Corpus Christi Division**

**ORVAL C. LOGUE, IND. & AS PERSONAL  
REPRESENTATIVE OF HIS DECEASED SON,  
REAGAN EDWARD LOGUE**

**v.**

**UNITED STATES OF AMERICA**

**C. A. NO. 69-C-106**

**MEMORANDUM AND OPINION**

Reagan Edward Logue, a Federal prisoner, hanged himself in the Nueces County jail. His adoptive father, Orval C. Logue, has brought this suit under the provisions of the Federal Tort Claims Act, 28 U.S.C., § 2671, et seq, to recover damages from the government under the Texas Wrongful Death Act, Article 4671, et seq, Revised Civil Statutes of Texas (1925), as amended, for himself and for Reagan Edward Logue's mother, Alice Maire Logue, now Mrs. Blouin, and on behalf of the Estate of Reagan Edward Logue for the decedent's pain and suffering and for funeral expenses. This Court has full and complete jurisdiction of the subject matter of the parties and venue properly lies.

The Court finds the following facts surrounding the death of Reagan Edward Logue:

1. On May 22, 1968, the deceased, then eighteen years of age, was arrested by Deputy United States Marshal Del W. Bowers in Corpus Christi, Texas, on a bench warrant charging the said Reagan Edward Logue with conspiracy to smuggle 229 pounds of marijuana into the United States, and he was placed in the Nueces County jail as a Federal prisoner.

2. At about 3:00 p.m. the next day, the prisoner attempted suicide by inflicting a serious cut upon his left arm. Thereafter, he was transported from the jail to Memorial Hospital, where he was treated for the laceration and admitted with a diagnosis that he was acutely psychotic.

3. On May 24, 1968, Deputy Marshal Bowers, after conferences with his superiors in the Marshal's office and with Shannon Gwin, M.D., the prisoner's medical doctor, decided to return the prisoner to the Nueces County jail. Dr. Gwin recommended to the Deputy Marshal that the prisoner remain in the hospital until he could be transferred to another medical facility. At this time, the prisoner had serious suicidal tendencies and his condition was not improved over what it had been when he was admitted to the hospital the day before.

4. At about 3:30 p.m. on the same day, Dr. Gwin, because he thought he had no choice, released the prisoner from the hospital to Deputy Marshal Bowers, who returned him to the Nueces County jail, pending his transfer to a Federal mental institution.

5. Deputy Bowers knew the prisoner had serious suicidal tendencies and should be protected against injuring or killing himself, and at Deputy Bowers' request, the



prisoner was put in a cell which had been stripped of everything except the bunk with a mattress, the commode and wash basin. The steel walls and ceiling of the cell were symmetrically perforated with round holes about the size of a half dollar. There was no ceiling light fixture. No specific arrangements were made by the Deputy Marshal for constant surveillance of the prisoner, and this was negligence.

6. The Sheriff's employees in the jail knew the prisoner had serious suicidal tendencies, and they did make precautionary surveillance checks after his return from the hospital, but those surveillance checks were made usually in connection with bringing some other prisoner onto the floor where Reagan Edward Logue was incarcerated. This was inadequate surveillance and was negligence.

7. When the prisoner was returned to the Nueces County jail on May 24, 1968, he had a long Kerlix bandage on his arm. At about 4:30 p.m. on the afternoon of the next day he removed the bandage and hanged himself with it. Each act of negligence above mentioned was a proximate cause of his death.

8. During the above-mentioned times, there was a contract for service in non-Federal institutions between Defendant United States of America and Nueces County, Texas, whereby the Sheriff of Nueces County agreed, among other things, to keep custody of Federal prisoners in the Nueces County jail at Corpus Christi, Texas. At all times material hereto, the Deputy United States Marshals involved in the arrest and detention of Reagan Edward Logue were acting within the scope of their employment for the United States government; and the members of the

Sheriff's Department were acting within the scope of their employment.

The Court draws the following conclusions of law from the facts heretofore set out:

1. The decision of Deputy United States Marshal Bowers and his superiors to remove Reagan Edward Logue from the hospital to the Nueces County jail was a discretionary act within the purview of 28 U.S.C., § 2680; but, that decision having been made, the Deputy Marshal had a duty to see that reasonable care be taken at the jail to protect the prisoner against another suicidal attempt. *Smart v. United States*, 10 Cir., 207 F.2d 841; *Costley v. United States*, 5 Cir., 181 F.2d 723.

2. The government is not an insurer of the safety of its prisoner; however, once it became aware, through the knowledge of the Deputy Marshals involved, of the psychotic condition and suicidal tendencies of this prisoner, the reasonable care which the government was required to take was that care necessary to make certain the prisoner did not commit suicide while in jail. *Lange, et al, v. United States*, 179 F. Supp. 777; *United States v. Gray*, 10 Cir., 199 F.2d 239.

3. The fact that there was a contract existing between Defendant and Nueces County regarding the care and custody of Federal prisoners in the status of Reagan Edward Logue who are kept in the Nueces County jail, did not relieve the Defendant of its responsibility of such prisoners, and particularly to Reagan Edward Logue, under 18 U.S.C., § 4042. *Williams v. United States, et al*, 9 Cir., 405 F.2d 951.

4. Whether the Deputy United States Marshal failed to adequately inform the Nueces County jailer as to the necessity for constant surveillance, or the jailer failed to carry out the suggested constant surveillance needed for the protection of the prisoner, makes no difference. *Williams v. United States*, supra; *In Re Morgan*, 80 F. Supp. 810. The government was bound by those negligent acts in either instance.

5. The pre-existing mental condition of the prisoner and mistakes of the natural mother and the adoptive father in the guidance and medical attention provided for their deceased son are not pertinent. The negligence of the United States was the proximate cause of Reagan Edward Logue's death.

The Court must now determine the extent of the Defendant's liability to the Plaintiffs, and this is not an easy task. The adoptive father and the natural mother of the deceased Reagan Edward Logue may recover only the pecuniary benefits they might expect to receive. The determination of their recovery cannot be left to mere guess or conjecture, nor prompted by sympathy.

This young man was first arrested for possession of marijuana in 1967 and thereafter he was extensively involved in drug traffic, as a user and a pusher, in Corpus Christi and Austin, Texas. He had already pleaded guilty to possession of LSD for the purpose of sale in the United States District Court in Austin, Texas, but was not yet sentenced when he was arrested pursuant to an indictment in the Federal Court in Laredo, Texas, for smuggling marijuana into this country. At the time of this last arrest, on May 22, 1968, he was in a serious psychotic

state from the ingestion of LSD or some other toxic agent. All conditions indicated it was extremely unlikely the deceased, had he lived, would have rendered any valuable services for the benefit of either Plaintiff, over and above their expenses, including attorneys' fees, during the remaining two and one half years of his minority.

Any pecuniary advantage to the Plaintiffs after that would obviously depend upon his rehabilitation. Both Dr. White, an intern who saw him only one time and then briefly, and the probation officer felt he could be rehabilitated. This evidence was not impressive. However, medical science continues to progress and, if the young man had lived, the Court cannot say he would not have returned to reality, and earned his own way. He did work as a boilermaker at sixteen and seventeen years of age and was a satisfactory employee. But, whether or not he would have stayed out of trouble, or at some later date accomplished his death, his past record makes the future very uncertain.

It is also important to consider what pecuniary damages the Plaintiffs would have suffered. *Hernandez v. United States*, 313 F. Supp. 349, 364. There is little indication the adoptive father would need any appreciable pecuniary assistance. It is more likely the natural mother would someday need help. The Court finds both parents are entitled to some damages.

Suit was also brought herein on behalf of the Estate of Reagan Edward Logue, deceased, for his pain and suffering immediately prior to his death and for funeral expenses. Plaintiffs admitted in open court that no proof had been made regarding the claim for pain and suffering.

However, the estate is entitled to recover the funeral expenses.

It is, therefore, ORDERED that Orval C. Logue have judgment against the United States of America in the amount of \$5,000.00, to be apportioned \$3,500.00 to Alice Maire Blouin and \$1,500.00 to Orval C. Logue; and the Estate of Reagan Edward Logue, deceased, takes nothing by its suit, except that it shall recover from the United States the funeral expenses in the amount of \$1,164.50.

DATED the 16th day of February, 1971.

OWEN D. COX  
United States District Judge

APPENDIX "B"

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 71-2426

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ORVAL C. LOGUE, ETC., Plaintiff-Appellee,  
versus  
UNITED STATES OF AMERICA,  
Defendant-Appellant.

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*Appeal from the United States District Court for the  
Southern District of Texas*

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(May 1, 1972)

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Before GEWIN, AINSWORTH and SIMPSON,  
Circuit Judges.

SIMPSON, Circuit Judge: Reagan Edward Logue (hereinafter Logue), on May 25, 1968, while confined in the Nueces County, Texas, jail pursuant to a federal bench warrant, hanged himself. Suit was brought against the United States to recover damages under the Federal Tort Claims Act, Title 28, U. S. Code, Chapter 171, and the Texas Wrongful Death Act, Revised Civil Statutes of Texas, Article 4671, et seq. by the deceased's adoptive

father, Orval C. Logue, his mother, Alice Marie Logue Blouin, and by Orval C. Logue for the estate of Reagan Edward Logue. The district court after an evidentiary trial rendered judgment against the United States in the following amounts: \$3,500.00 to the deceased's mother, \$1,500.00 to Orval C. Logue and \$1,164.50 to the deceased's estate for funeral expenses.

On this appeal by the United States we find no basis for holding it liable in damages for the prisoner's death. We reverse the judgment of the district court and direct entry of judgment for the appellant.

### *THE FACTS*

The 18 year old deceased was arrested on May 22, 1968, at Corpus Christi, Texas, by Deputy United States Marshal Bowers on a federal bench warrant issued by the Laredo Division of the Southern District of Texas charging conspiracy to smuggle 229 pounds of marijuana into the United States. Deputy Marshal Bowers placed the deceased in the Nueces County jail, Corpus Christi, as a federal prisoner. That facility was used as a contract jail by the United States under the provisions of Title 18, U. S. Code, Section 4002.<sup>1</sup>

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1. "§4002. Federal prisoners in state institutions; employment

For the purpose of providing suitable quarters for the safe-keeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care and proper employment of such persons.

"Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of

About 3:00 P.M. May 23, Logue attempted suicide by cutting veins in his left arm. The wound appeared sufficiently serious for the County jailer to cause him to be taken to Memorial Hospital. There he was treated for the laceration and placed under guard in a bare room in an area of the hospital reserved for mental patients. He was seen by a psychiatrist, Dr. Shannon Gwin, and diagnosed as psychotic. There was testimony at trial that Logue also was then under the influence of an hallucinatory drug, probably LSD. Deputy Marshal Bowers sought advice from his superiors but was unable to produce a satisfactory plan to keep Logue under guard at the hospital.

On May 24, 1968, after further conferring with his superiors in the United States Marshal's Office at Laredo and at Houston and with Dr. Gwin, Deputy Marshal Bowers decided to return Logue to the Nueces County jail, despite Dr. Gwin's recommendation that the prisoner remain in the hospital until he could be transferred to another medical facility equipped to deal with his suicidal tendencies. At about 3:30 P.M. that same day, Dr. Gwin, believing that he had no choice in the matter, released Logue to Bowers, who returned him to the Nueces County jail to await processing for transfer to a federal mental institution. Bowers' trial testimony was that the decision

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the institutions of, the State or political subdivision in which they are imprisoned.

"The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons."



to move the prisoner back to the county jail was made by his superiors.

Deputy Marshal Bowers, aware of Logue's suicidal impulses, requested the Nueces County jail authorities to provide a cell stripped of items likely to prove injurious. In compliance with this request the prisoner was placed in a cell containing nothing except a bunk with a mattress, a toilet and a wash basin. Deputy Marshal Bowers made no arrangements for Logue's cell to be under constant surveillance. Neither did the jail employees undertake continuous surveillance of the prisoner. They did look in on him as they brought other prisoners to his jail floor.

Logue was returned to the Nueces County jail on May 24, wearing a long Kerlix bandage on his injured left arm. About 4:30 P.M., May 25, he removed the bandage and hanged himself with it from his cell bars.

### *THE DECISION BELOW*

The trial court found that Deputy Marshal Bowers was negligent in failing to make arrangements for constant surveillance of the deceased when he was returned to the Nueces County jail on May 24, 1968. In addition, the court below found that the employees of the jail, having actual or constructive knowledge of Logue's suicidal tendencies, were negligent in failing to place him under constant surveillance upon his return to the jail. The district court concluded that both manifestations of negligence were attributable to the United States, thereby rendering it liable in damages for the death of Reagan Edward Logue under the Federal Tort Claims Act.

### *GROUND'S ASSERTED ON APPEAL*

The United States seeks reversal of the judgment below on three grounds:

- (1) The district court erred in finding that the negligent acts and/or omissions of the employees of the Sheriff's Office in Nueces County in their handling of a federal prisoner were attributable to the United States.
- (2) The district court erred in holding that there was a duty on the part of Deputy Marshal Bowers to provide for constant surveillance of the deceased in the jail, in that to require such surveillance was patently beyond his power or authority.
- (3) The district court's finding as to the deceased's future potential and/or prospects to make a financial contribution to the individual plaintiffs is legally insufficient to support the award of damages made.

Inasmuch as we reverse the findings below as to liability, no discussion of the adequacy of the proof as to damages (ground 3 of appeal, *supra*) appears appropriate. It is unnecessary to reach that contention.

### *LIABILITY*

Relying upon the first paragraph of Title 18, U.S.C., Section 4002 (authority for the Director of the Bureau of Prisons to contract with state and local prison officials), the United States argues that the Nueces County jail was a "contractor" within the meaning of Section 2671,

Title 28, United States Code.<sup>2</sup> From this premise, it reasons that the United States is not liable under the Federal Tort Claims Act for the negligent acts and/or omissions of the Nueces County jail's employees. Additionally, the United States contends that Deputy Marshal Bowers had no authority to require the provision of constant surveillance of the deceased while the latter was confined to the Nueces County jail.

In reply, the plaintiffs argue that Deputy Marshal Bowers was under a duty imposed by Title 18, U.S.C., Section 4042,<sup>3</sup> to insure the safety and well-being of the deceased and that a breach of that duty provides the basis for a recovery from the United States under the Federal Tort Claims Act. The claim is made that in the circumstances of this case such a breach would be

2. Title 28, U.S.C., §2671:

"As used in this chapter and sections 1346(b) and 2401(b) of this title, the term 'Federal agency' includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States."

3. Title 18, U.S.C., Section 4042:

"The Bureau of Prisons, under the direction of the Attorney General, shall —

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local government in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein."

actionable whether committed by the employees of the Nueces County jail or by Deputy Marshal Bowers.

The United States is subject to suit under the Federal Tort Claims Act for injuries suffered by federal prisoners confined in federal facilities. *United States v. Muniz*, 1963, 374 U.S. 150, 83 S.Ct. 1850, 10 L.Ed.2d 805. But we agree with the United States that *Muniz* does not extend to the situation now before us, where a federal prisoner is housed in a non-federal facility pursuant to Title 18, U.S.C., Section 4002. We interpret this section as fixing the status of the Nueces County jail as that of a "contractor". Title 18, U.S.C., Sec. 2671, footnote 2, *supra*. This insulates the United States from liability under the FTCA for the negligent acts or omissions of the jail's employees. We find no support in the record for holding that Deputy Marshal Bowers had any power or authority to control any of the internal functions of the Nueces County jail. The deputy marshal, accordingly, violated no duty of safekeeping with respect to the deceased.

*Close v. United States*, D.C. Cir. 1968, 397 F.2d 686, relied upon by the appellees, is distinguishable from the case at bar. *Close* was a suit to recover damages under the FTCA for permanent disablement to the plaintiff caused by a fall in the District of Columbia jail allegedly due to defective shoes. The plaintiff was housed in the District jail (not under the jurisdiction of the United States) pending the disposition of his appeal from a conviction by the District of Columbia district court. The Court of Appeals in *Close* reversed the district court's dismissal of the complaint, holding that Congress did not intend to suspend the availability of the Federal Tort

Claims Act to a federal prisoner incarcerated in the District of Columbia jail.

The Court of Appeals in *Close* was careful to note that the United States did not claim that the District of Columbia jail was a contractor of the Federal Government within the meaning of the contractor exception of the Federal Tort Claims Act, Title 28, U.S.C., Sec. 2671, footnote 2, *supra*. As noted above, such a claim is made with respect to the county jail here involved. The D. C. Circuit also observed the special relationship existing between the Federal Government and the Government of the District of Columbia:

"We note in this regard that, for purposes of the FTCA, Congress has defined 'Employee of the [federal] government' as including 'persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation'. 28 U.S.C. § 2671. The cases have, on occasion, regarded D. C. Governmental agencies as 'federal agencies' for purposes of the FTCA, depending upon the amenability of such agencies to federal control. We are not persuaded by anything appearing in this record that the Attorney General was, in a matter of this kind, wholly lacking in any capacity to assure the proper care of a prisoner for whose custody he was primarily and permanently responsible." 397 F.2d at 687.

The judgment of the district court is reversed and the cause is remanded with directions to enter judgment for the United States.

**APPENDIX "C"**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 71-2426

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**ORVAL C. LOGUE, ETC., Plaintiff-Appellee,  
versus  
UNITED STATES OF AMERICA,  
Defendant-Appellant.**

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*Appeal from the United States District Court for the  
Southern District of Texas*

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**ON PETITION FOR REHEARING AND PETITION  
FOR REHEARING EN BANC  
(Opinion May 1, 1972, 5 Cir., 1972, \_\_\_\_ F.2d \_\_\_\_).**

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(July 31, 1972)

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**Before GEWIN, AINSWORTH and SIMPSON,  
Circuit Judges.**

**PER CURIAM:** The Petition for Rehearing is **DE-  
NIED** and the Court having been polled at the request  
of one of the members of the Court and a majority of the  
Circuit Judges who are in regular active service not hav-

ing voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is also DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON MORGAN, CLARK, INGRAHAM and RONEY, Circuit Judges.

BROWN, Chief Judge, with whom, WISDOM and GOLDBERG, Circuit Judges, join dissenting from the denial of rehearing en banc:

If a Deputy United States Marshal, after discovering a tubercular prisoner's critical physical condition, nevertheless decided to consign that individual to the custody of State authorities in a county jail without first determining whether the facilities provided adequate treatment for tuberculosis victims, and without even attempting to find out whether the conditions of confinement reasonably assured continued survival, I have difficulty believing that the Government's liability under the Federal Tort Claims Act for death resulting from lack of proper medical attention or from an unsanitary environment could be avoided with the bland assertion that the Marshal had no authority to convert the jail into a hospital. Since the facts of the present case are not materially different, I suggest that this serious and previously unresolved problem involving the care of Federal prisoners temporarily confined under contract with State officials is of sufficient importance to merit en banc reconsideration by the Court.

No one disputes that the Marshal was explicitly charged by law with an affirmative duty to provide for the safe-

keeping, care and protection of persons in his custody accused of Federal offenses. 18 U.S.C.A. § 4042. No one suggests that the Marshal was not given more than fair warning of his prisoner's unmistakably suicidal tendencies as a result of his initially unsuccessful but obviously serious attempt to take his own life. No one asserts that the Marshal made any reasonably diligent effort to assure proper supervision of the prisoner while he was confined alone in his cell or that the same tragic result would have transpired if Logue had remained in a hospital equipped to provide the necessary surveillance. The only justification advanced for overturning the District Court's finding of negligence on the part of the Marshal is the conclusion that the record provides no basis for holding that he "had any power or authority to control any of the internal functions of the Nueces County jail."

Without initiating an extensive discourse on the state of the evidence—which seems to offer at least some tangible support for the theory that the Sheriff and his deputies were subject to the Marshal's control because they frequently complied with his informal instructions or suggestions<sup>1</sup>—I need only point out that the question of the Marshal's authority to effect changes in the conditions of confinement is actually irrelevant here. The breach of the statutory duty of care occurred when Logue was confined under circumstances which the Marshal knew were inherently dangerous in the absence of special precautions, regardless of what he may or may not have been empowered to do about the situation. Once the Government undertakes performance of an act entailing a duty

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1. The panel's opinion supports this position by stating that the Nueces County authorities complied with the Marshal's request that Logue be placed in a cell stripped of all items likely to prove injurious.



of ordinary care it may not thereafter avoid liability under the Federal Tort Claims Act simply by abandoning the undertaking and attempting to attribute the responsibility to someone else. *Indian Towing Company v. United States*, 1955, 350 U.S. 61, 69, 76 S.Ct. 122, —, 100 L.Ed. 48, 56; *United States v. Gavagan*, 5 Cir., 1960, 280 F.2d 319, *cert. denied*, 1961, 364 U.S. 933, 81 S.Ct. 379, 5 L.Ed.2d 365.

Rather than providing for Logue's safety, the Marshal simply abandoned him, thus breaching the duty of care which, "in the case of a mental patient, \* \* \* must be reasonably adapted and proportioned to his known suicidal, homicidal, or other like destructive tendencies." *United States v. Gray*, 10 Cir., 1952, 199 F.2d 239, 242. In this respect the present case is equivalent to *Underwood v. United States*, 5 Cir., 1966, 356 F.2d 92, in which liability under the Act resulted from the Air Force's negligence in permitting a mentally deranged Airman to return to unrestricted duty and to draw from the armory a pistol he subsequently used to kill his wife. There was no suggestion that liability was contingent upon the exercise of "authority" or "control" by the Government at the time of the shooting, since liability arose only from the initial failure to utilize ordinary care. The same is true here—the Marshal's purported inability to arrange for the continuous observation of the prisoner does not excuse the earlier breach of the duty to provide a reasonably safe place of confinement.<sup>2</sup>

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2. The Government attempts to distinguish *Underwood* by implying that here its statutory responsibilities were somehow "delegated to the Sheriff and his deputies. Neither the statutes nor the case law sanctions such a "delegation." *Indian Towing Company v. United States*, *supra*; *United States v. Gavagan*, *supra*.

The Court also reasons that the negligence of the State authorities in failing to keep Logue under constant scrutiny cannot be attributed to the United States because the Nueces County jail was a "contractor" within the meaning of 18 U.S.C.A. § 2671. Of course I do not dispute the axiomatic proposition that ordinarily such a "contractor" is not an "employee" for whose negligence the Government is liable under the Act. *Emelwon, Inc. v. United States*, 5 Cir., 1968, 391 F.2d 9, *cert. denied sub nom. Florida v. Emelwon, Inc.*, 393 U.S. 841, 89 S.Ct. 119, 21 L.Ed.2d 111. However, here the plaintiffs rely primarily upon that portion of the Act defining "employees" as "\* \* \* persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation." 28 U.S.C.A. § 2671. Since under the contract arrangement State authorities perform all functions incidental to the confinement of Federal prisoners that would otherwise be performed by the United States Marshal, the theory is that the Marshal's office is a "federal agency" on behalf of which State jailers act "in an official capacity, temporarily \* \* \* in the service of the United States." In effect, the Nueces County Sheriff and his deputies become surrogate Marshals for purposes of Federal tort liability.

While passing no final judgment at this stage, I do point out that this argument was barely mentioned in the panel's opinion, much less refuted by it. The Government contends that a Marshal has no authority to appoint a State law enforcement officer to act on behalf of or in the service of the United States, yet under the literal wording of the statute the absence of such authority would appear to be irrelevant. Moreover, when the Government decides

that a particular individual should assume obligations and responsibilities virtually identical to those of a salaried Federal employee, there may very well be some persuasive basis for the suggestion that such an individual's breach of a specific statutory duty owed by the salaried employee to a specific class of persons should visit identical liability upon the United States. Obviously there is more than a subtle distinction between a "contractor" who breaches a duty of reasonable care owed to the world at large and a "contractor" who performs specific custodial functions that under a plain Congressional mandate would ordinarily entail a definite obligation of due care owed to a discrete (and particularly vulnerable) class of people. If only for the sake of uniformity and the avoidance of formalistic legal distinctions totally divorced from the realities of the situation, further consideration of the problem might inevitably lead to the conclusion that the Sheriff and his deputies were "employees" within the meaning of the Act, particularly in light of the principle that "the Government's liability is no longer restricted to circumstances in which government bodies have traditionally been responsible for misconduct of their employees. The Act extends to novel and unprecedented forms of liability as well." *United States v. Muniz*, 1963, 374 U.S. 150, 159, 83 S.Ct. 1850, \_\_\_, 10 L.Ed.2d 805, 813. As has long been recognized, "the Federal Tort Claims Act waives the Government's immunity from suit in sweeping language." *United States v. Yellow Cab Company*, 1951, 340 U.S. 543, 547, 71 S.Ct. 399, \_\_\_, 95 L.Ed. 523, 528.

Apart from the difficulties posed by this case in isolation, its implications within the broader context of modern-day prison administration are even more disturbing.

Overcrowding and substandard physical facilities inevitably have a progressively detrimental impact on the administrator's ability to insure the health, safety and welfare of those in his custody. Increasingly we are being forced to confront undeniable evidence that the inmates of many institutions routinely subject other prisoners to varieties of subhuman treatment that no citizen of a civilized nation, whatever his transgression against society, should be compelled to endure. That such outrages are inflicted upon those serving sentences following conviction is disgraceful. But when the victim charged with a Federal offense is merely confined temporarily in a State jail while awaiting transfer or release on bond, I hardly think we provide an acceptable answer when we tell him or his family that restitution for death or injury resulting from his custodian's culpable neglect is unavailable because the responsible official was wearing a State rather than a Federal badge. In such circumstances I cannot concede that despite the constable's blunder the Government must go free.

I dissent from the denial of rehearing en banc.

**APPENDIX "D"**

Section 1346(b) of Title 28, United States Code, provides as follows:

Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. June 25, 1948, c. 646, 62 Stat. 933; Apr. 25, 1949, c. 92, § 2 (a), 63 Stat. 62; May 24, 1949, c. 139, § 80(a), (b), 63 Stat. 101; Oct. 31, 1951, c. 655, § 50(b), 65 Stat. 727; July 30, 1954, c. 648, § 1, 68 Stat. 589; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348.

Section 2671 of Title 28, United States Code, provides as follows:

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term—

"Federal agency" includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States. As amended July 18, 1966, Pub. L. 89-506, § 8, 80 Stat. 307.

**"Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.**

**"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States, means acting in line of duty. June 25, 1948, c. 646, 62 Stat. 982; May 24, 1949, c. 139, § 124, 63 Stat. 106.**

**APPENDIX "E"**

Section 4042 of Title 18, United States Code, provides as follows:

The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local government in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

June 25, 1948, c. 645, 62 Stat. 849; July 1, 1968, Pub.L. 90-371, 82 Stat. 280.

**APPENDIX "F"**

Section 4002 of Title 18, United States Code, provides as follows:

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

June 25, 1948, c. 645, 62 Stat. 847.



## APPENDIX "G"

FEDERAL PRISONERS CONFINED WEEK ENDED 3/10/72

INSTITUTION	POPULATION		PLANNED CAPACITY		PRESENT +/-TEM- PORARY	SELECTED TYPES SEN- TENCED	UN- SEN- TENCED
	PRESENT	PREVIOUS YEAR	BASE OPTIMUM	TEM- PORARY PLAN			
TOTAL, ALL INSTITUTIONS...	22,393	21,338	20,698	21,553	+840	21,741	652
JUVENILES & YOUTHS	1,089	1,024	1,136	1,111	-22	1,053	36
ASHLAND.....	531	477	450	475	+56	519	12
ENGLEWOOD.....	333	331	325	325	+8	316	17
MORGANTOWN (MALE).....	183	199	325	275	-92	179	4
MORGANTOWN (F) 7-11-71.	42	17	36	36	+6	39	3
YOUNG ADULTS	4,355	3,907	3,900	4,025	+330	4,258	97
FL REVD.....	1,071	901	900	925	+146	1,059	12
LOMPOC.....	1,067	899	1,050	1,100	-33	1,052	15
MILAN.....	601	579	550	550	+51	551	50
PETERSBURG.....	616	612	500	525	+91	604	12
SEAGOVILLE.....	409	394	400	400	+9	409	0
TALLAHASSEE.....	591	622	500	525	+66	583	8
LONG TERM ADULTS	9,139	9,478	8,590	9,040	+99	9,117	22
ATLANTA.....	2,158	2,328	2,100	2,200	-42	2,152	6
LEAVENWORTH.....	1,944	2,208	1,900	2,000	-56	1,943	1
LEWISBURG.....	1,485	1,514	1,350	1,375	+110	1,472	13
ALLENWOOD.....	336	330	325	350	-14	336	0
MARION.....	524	508	525	525	-1	524	0
MARION (CAMP) 10-18-71.	92	0	90	90	+2	92	0
MCNEIL ISLAND (PEN.)...	905	955	820	900	+5	905	0
MCNEIL ISLAND (CAMP)...	249	257	280	300	-51	249	0
TERRE HAUTE.....	1,446	1,378	1,200	1,300	+146	1,444	2
INTERMEDIATE TERM ADULTS	3,728	3,321	3,370	3,550	+178	3,623	105
DANBURY.....	722	764	650	700	+22	686	36
LA TUNA.....	732	697	600	625	+107	730	2
SANDSTONE.....	528	507	470	475	+53	528	0
TERMINAL ISLAND (MALE).	760	762	650	675	+85	730	30
TEXARKANA.....	568	591	500	525	+63	566	2
FT. WORTH (M) 10-20-71.	361	0	450	500	-139	327	34
FT. WORTH (F) 11-26-71.	57	0	50	50	+7	56	1
SHORT TERM ADULTS	1,965	1,660	1,660	1,785	+180	1,799	166
EGLIN.....	455	426	350	400	+55	455	0
FLORENCE DET. JAIL.....	105	97	60	125	-20	86	19
LEAVENWORTH (CAMP).....	203	0	200	200	+3	203	0
LOMPOC CAMP-OP 4/15/70.	346	332	350	350	-4	346	0
MONTGOMERY.....	273	263	225	225	+48	273	0
NEW YORK DET. JAIL.....	275	245	225	225	+50	128	147
SAFFORD.....	308	297	250	260	+48	308	0
FEMALE OFFENDERS	714	770	655	655	+59	672	42
ALDERSON.....	552	589	475	475	+77	521	31
TERMINAL ISLAND.....	162	181	180	180	-18	151	1
INTENSIVE MED. TREATMENT	1,042	884	1,050	1,050	-8	897	145
SPRINGFIELD HOSPITAL...	665	595	750	750	-85	520	145
SPRINGFIELD CAMP.....	377	289	300	300	+77	377	0
COMMUNITY TREATMENT CTRS..	361	294	337	337	+24	322	39
ATLANTA.....	30	25	28	28	+2	28	2
CHICAGO.....	54	47	52	52	+2	49	5
DETROIT.....	42	34	30	30	+12	29	13
HOUSTON.....	26	25	36	36	-10	24	2
KANSAS CITY.....	22	19	15	15	+7	14	8
LOS ANGELES.....	52	51	50	50	+2	49	3
NEW YORK.....	83	43	70	70	+13	81	2
OAKLAND.....	24	23	26	26	-2	21	3
DALLAS 3-1-71.....	28	27	30	30	-2	27	1

# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-656

ORVAL C. LOGUE, INDIVIDUALLY AND AS  
PERSONAL REPRESENTATIVE OF  
HIS DECEASED SON, REAGAN LOGUE,  
AND ALICE MARIE BLOUIN, PETITIONERS

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

---

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Reagan Logue hanged himself while confined in the Nueces County, Texas, jail pursuant to a federal bench warrant. Petitioners, his parents and personal representatives, brought this action under the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*<sup>1</sup> to recover damages for the alleged negligence of the United States in improperly supervising his confinement. Pe-

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<sup>1</sup> Although the action was also originally brought under the Texas Wrongful Death Act, Article 4671, *et seq.*, Revised Civil Statutes of Texas (1925), no claim under that Act is alleged here.

tioners prevailed in the district court, 334 F. Supp. 322 (Pet. App. A), but the court of appeals reversed, 459 F. 2d 408 (Pet. App. B), and denied a petition for rehearing, 463 F. 2d 1340 (Pet. App. C).

The court of appeals held that where, as here, a federal prisoner is housed in a non-federal facility which is a "contractor" under the Tort Claims Act, the United States—which, under the Act is liable only for torts of federal employees—is not liable for the negligent acts of the jail's non-federal employees. It further held that the Deputy United States Marshall, having no control over the internal operation of the jail, breached no duty to the deceased (Pet. App. B 34).

2. The narrow factual questions whether the Nueces County Jail was an independent contractor of the United States, whether the employees of the jail were federal or non-federal employees, and whether the United States Marshall breached his duty to the deceased, have been fully and correctly resolved adversely to petitioners in the court of appeals. The particular facts here distinguish this case from the others relied on by petitioners and there is no conflict of decisions.<sup>2</sup> Petitioners do not question the authority,

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<sup>2</sup> As pointed out below, *Close v. United States*, 397 F. 2d 686 (C.A. D.C.), involving a federal prisoner in a District of Columbia jail, is distinguishable on two grounds: first, there was in *Close* no claim that the local jail was a contractor as defined in the Federal Tort Claims Act, and second, the court there concluded that the Attorney General had sufficient control over the District of Columbia jail to justify considering it a federal facility.

In the other case relied upon by petitioners, *Witt v. United States*, 462 F. 2d 1261 (C.A. 2), a military prisoner held in a fed-

granted by Congress in 18 U.S.C. 4002, of the Director of the Bureau of Prisons to contract with state and local prison officials. If, as petitioners allege, conditions in non-federal prison facilities are substandard, and the decision to utilize such facilities for the temporary incarceration of federal prisoners is unwise, this is a matter for Congressional resolution.

In sum, there is no occasion for further review here and the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,  
*Solicitor General.*

DECEMBER 1972.

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eral disciplinary barracks was injured while being transported by a private contractor for whom he had worked pursuant to an agreement between the contractor and the barracks. The court held that the government had a responsibility for his safety while in the custody of the barracks which could not be avoided simply because the private contractor, rather than military personnel, transported him to and from his work. Similarly, here, the Nueces County jail had the responsibility for the general custody and care of the prisoner.

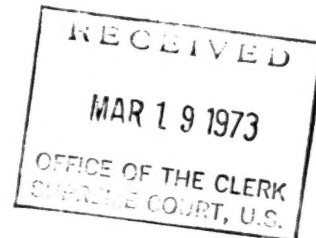
The instant case is not inconsistent with *United States v. Muniz*, 374 U.S. 150, which involved a prisoner in a federal facility, nor with the refusal in *Rayonier, Inc. v. United States*, 352 U.S. 315, 320, to "read exemptions into the [Tort Claims] Act beyond those provided by Congress," since the exemption of independent contractors was specifically directed by Congress in 28 U.S.C. 2671.

WILLIAM R. EDWARDS  
HUBERT L. STONE  
JAMES DEANDA  
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March 16, 1973



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Hon. Michael Rodak, Jr.  
Clerk, United States Supreme Court  
Washington, D.C. 20543

Re: Logue v. United States  
No. 72-656

Dear Mr. Rodak:

In reading over the Brief of Petitioners previously filed with the Court, I have noticed the following typographical errors. Reference to 18 U.S.C. § 4042 has mistakenly been printed as 28 U.S.C. § 4042 on the following pages: Subject Index, Argument, paragraphs b. and e.; pages 6, 7, 8, 14 and 26. On page 7, line 4 "case" should read "care". On page 14, last line, 18 U.S.C. § 2671 should read 28 U.S.C. § 2671.

I deeply regret this inadvertence and would appreciate your directing the Court's attention to these corrections.

Thank you for your consideration.

Very truly yours,

EDWARDS, STONE & DE ANDA

  
J. Robert McKissick

cc: Solicitor General  
Department of Justice  
Washington, D.C. 20530

OVERSIZE PAGE  
SEE NEXT FRAME  
FOR REMAINDER OF PAGE

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J. Robert McKissick

cc: Solicitor General  
Department of Justice  
Washington, D.C. 20530

cc: Mr. Ed Idar, Jr.  
Mexican-American Legal Defense Fund  
319 Aztec Building  
San Antonio, Texas

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145 9th Street  
San Francisco, California 94102

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Tex.Rev.Civ.Stat. Ann. Art. 5115	7, 24, 30

## MISCELLANEOUS

Note, <i>Incarcerating the Innocent: Pretrial Detention in Our Nation's Jails</i> , 21 Buff. L. Rev. 891 (1972)	30
Note, <i>Constitutional Limitations on Conditions of Pretrial Detention</i> , 79 Yale L.J. 941 (1970)	30
RESTATEMENT (SECOND) OF AGENCY § 19 (1958)	25
RESTATEMENT (SECOND) OF AGENCY § 212 (1958)	25
RESTATEMENT (SECOND) OF TORTS § 409 (1965)	14
RESTATEMENT (SECOND) OF TORTS § 424 (1965)	18
30 TEXAS JURISPRUDENCE 2d, <i>Independent Contractors</i> , § 25 (1962)	18

# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-656

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ORVAL C. LOGUE, individually and as personal representative of his deceased son, Reagan Logue, and ALICE MARIE BLOUIN, *Petitioners*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

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## BRIEF OF PETITIONERS

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Orval C. Logue, individually, and as personal representative of his deceased son, Reagan Logue, and Alice Marie Blouin, the natural mother of Reagan Logue, present to this Honorable Court their brief on the merits in support of the question presented in their petition for writ of certiorari granted by the Court on January 8, 1973.

## OPINIONS BELOW

The district court's memorandum opinion (A. 607), awarding Petitioners recovery under the Federal Torts Claims Act, is reported at 334 F.Supp. 322. The opinion of the court of appeals (A. 616) reversing the district court is reported at 459 F.2d 408 and the subsequent order of that court denying rehearing en banc and the opinion dissenting from such order (A. 624) is reported at 463 F.2d 1340.

## **JURISDICTION**

The decision of the court of appeals denying Petitioners' motion for rehearing en banc was entered on July 31, 1972. The petition for writ of certiorari was docketed with the court on October 28, 1972 within ninety (90) days after the entry of such final judgment as provided by 28 U.S.C. § 2101(c). The jurisdiction of this Court was invoked under 28 U.S.C. § 1254(1).

## **STATUTES INVOLVED**

The pertinent provisions of the Federal Tort Claims Act (28 U.S.C. §§ 1346 (b) and 2671) are set forth in Appendix, Vol. III, at page 631. The statute imposing on the United States the duty to safely keep, care for and protect federal prisoners (18 U.S.C. § 4042) is reproduced in Appendix, Vol. III at page 633. The statute authorizing the United States to contract with non-federal governmental authorities for the detention of federal prisoners (18 U.S.C. § 4002) is set forth in Appendix, Vol. III at page 634.

## **QUESTION PRESENTED**

This case presents the issue of whether the United States may exempt itself from liability under the Federal Tort Claims Act for injuries negligently caused to a federal prisoner by relinquishing supervision over the prisoner to a local county jail pursuant to a contract providing for housing federal prisoners in the jail.

## **STATEMENT OF THE CASE**

The decedent, Reagan Logue, was arrested by a Deputy United States Marshal, May 22, 1968, on a bench warrant issued by United States District Judge Ben C.

Connally out of the Laredo Division of the Southern District of Texas, charging him with conspiracy to smuggle marijuana into the United States. Logue was placed by the Deputy Marshal in the Nueces County Jail at Corpus Christi, Texas, as a federal prisoner. At the time Logue was eighteen years of age. (A. 593).

The next day Logue attempted suicide while confined in the jail by cutting his left arm with a razor blade. When the Nueces County Jailer, Tom Lowrance discovered this, he had Logue taken to Memorial Hospital in Corpus Christi and immediately tried to contact the United States Marshal. (A. 419, 421).

On admission to the hospital, Logue was diagnosed as acutely psychotic, and after being treated for his injury, he was heavily tranquilized and placed in a special, locked room in the psychiatric unit of the hospital to prevent him from again attempting suicide. (A. 111-112). Both psychiatrists that attended him at the hospital felt his mental condition was such that another suicide attempt was likely. (A. 114, 166-167).

In the meantime, Lowrance, unable to contact the United States Marshal, asked Howard Vaught, the local federal probation officer to assist him. After several unsuccessful telephone attempts, Vaught finally talked to Casey Slocomb, Chief Deputy United States Marshal in Houston, Texas. (A. 254). Slocomb requested Vaught to instruct the jailer to place guards over Logue at the hospital around the clock. Lowrance was further instructed by Slocomb that Deputy Marshal Bowers would take charge of the situation when he returned to Corpus Christi. (A. 96, 323). Bowers learned of Logue's suicide attempt from Lowrance at 8:30 a.m. on May 24, 1968, and went to the hospital to check on Logue's condition. (A. 322-323). There

he talked to the psychiatrists who informed him of Logue's mental condition and recommended that Logue remain in the hospital to prevent another suicide attempt. (A. 114, 119, 160, 326-327, 330).

Thereafter Bowers contacted his supervisor in Laredo, Texas, Deputy Marshal Jones, who advised him to keep guards at the hospital if necessary at federal expense. (A. 330-332). Based on Dr. Gwin's suggestion, as well as Logue's attorney, Marvin Foster, Jones contacted Assistant United States Attorney Ronald Blask and they requested that Judge Connally enter an order committing Logue to the federal medical center at Springfield for psychiatric examination pursuant to 18 U.S.C. § 4244. After discussing the situation with Blask and Jones, Judge Connally agreed to enter the Order. (A. 330-331, 379-383).

Bowers again contacted Chief Deputy Slocomb who advised him that Logue should be returned to the jail if a safe place could be arranged for his confinement. After again talking to Jones in Laredo, arrangements were made to obtain a solitary cell at the jail. (A. 332, 333). Jones also contacted Lowrance at the jail and gave him instructions regarding Logue's confinement at the jail. (A. 383-388).

Bowers went to the jail and inspected the cell, then contacted Dr. Gwin, Logue's treating doctor (A. 148, 155-156) and advised him that he had inspected the cell and in his judgment Logue would be safe there and that Judge Connally's order would be forthcoming so that Logue could be removed to a federal institution as soon as possible. (A. 336). Dr. Gwin noted on Logue's progress report "U. S. Marshal told patient should remain here until transfer to another hospital, but Judge Connally ordered him returned to jail." In compliance with the orders received from the

Marshal and against his recommendation, and Dr. White's, Gwin released Logue from the hospital. (A. 165-167, 119).

Deputy Marshal Bowers testified that it was not his decision to make whether Logue remained in the hospital and that he had been instructed by his superiors not to take Logue out of the hospital unless he had a release from Dr. Gwin. (A. 341, 343). Deputy Marshal Jones testified that Deputy Marshal Bowers had told him it would not be safe to leave Logue in the hospital without guards and that he told Bowers that "it was his responsibility" and that Bowers should find some guards since it was his problem and he was on the scene. (A. 378). Later Jones told Bowers to call the doctor and advise him there was a commitment order pending, that they wanted to move the prisoner back to jail and in the event the doctor did not deem it advisable to give a release, he was to leave the prisoner in the hospital and advise Chief Deputy Slocomb. (A. 385).

Deputy Marshal Bowers returned Logue to the jail and noted on his daily log for May 24, 1968 "[c]ommitted Logue to Nueces County Jail, instructed jail personnel as to security for the above prisoner." (A. 366). Pursuant to the Marshal's instructions all movable objects were taken out of the cell, leaving only the commode, faucet and wash basin, and mattress on the metal bunk. In addition Logue's clothes were removed, except his shorts, and he was watched periodically by the jailers. (A. 445). About 4:45 p.m. on May 24, 1968, one of the jailers found Logue had hanged himself with the long Kerlix bandage that had been used to bind his wound after his first suicide attempt. (A. 450, 480). After trial, the district court held that the Deputy U. S. Marshal was negligent in failing to make specific arrangements for the constant surveillance



of the prisoner; that the jail employees were negligent in failing to keep the prisoner under constant surveillance; and that the United States government was liable for both these acts of negligence under the Federal Tort Claims Act. (A. 607). The court of appeals reversed, holding that (a) the Deputy Marshal had no authority or power to control the internal functions of the Nueces County jail and, therefore, had no duty to make specific arrangements for the prisoner's constant surveillance; and that (b) 18 U.S.C. § 4002, authorizing the United States to contract with non-federal governmental authorities for the detention of federal prisoners, fixed the status of the Nueces County jail as that of a "contractor," thereby insulating the United States from liability for the negligence of the jail's employees under the Federal Tort Claims Act, 28 U.S.C. § 2671. (A. 616). Chief Judge Brown, with whom Circuit Judges Goldberg and Wisdom joined, filed an opinion dissenting from the denial of rehearing en banc. (A. 624).

### **SUMMARY OF ARGUMENT**

The United States Marshal pursuant to 28 U.S.C. § 4042 was under a duty to protect all federal prisoners. He was negligent in reincarcerating Reagan Logue under circumstances that he knew were inherently dangerous. This act of negligence was separate and apart from any negligence on the part of the Nueces County jailer. Whether or not he had either the legal or actual authority to control the internal functions of the jail is irrelevant to the Marshal's failure to use reasonable care in discharging this duty.

In addition, this duty was non-delegable. In choosing the Nueces County jailers to carry out his duty to keep

Reagan Logue under constant surveillance, they in effect became his employees. Congress expressed its intent in 28 U.S.C. § 4042 that the Attorney General shall protect *all* federal prisons. By entrusting the case of Logue to the Nueces County jail, the employees of the jail became persons "acting on behalf of a federal agency" under the provisions of the Federal Tort Claims Act.

The United States Marshal in this instance asserted a great deal of authority and control over federal prisoners housed in the Nueces County jail. There was never an instance when the jailers did not defer to the instructions of the Marshal when a federal prisoner was involved. Although the Marshal did not have "control" in a legal sense over the internal functions of the jail he definitely was able to make any reasonable arrangements necessary to safeguard federal prisoners. This ability to assert control where federal prisoners were concerned had the same effect as if he had actually hired the jailers to carry out his duties and requirements for the protection of his prisoners. Accordingly, the Nueces County jailers were not employees of an independent contractor in the legal sense so as to insulate the United States from liability for their negligence.

In returning Logue to the Nueces County jail, knowing of his acutely psychotic condition the United States Marshal acted in violation of Texas law (Art. 5115, Tex.R.C.S.) as did the jailers in accepting him at the jail. Nor did the conditions under which he was incarcerated meet the standards of the statute for housing prisoners who may be dangerous to others. The contract between the United States and Nueces County, as it pertained to Reagan Logue, was invalid under Texas law to the extent of shielding the

United States from liability for the negligent acts of the Marshal and the employees of the jail.

Finally, if the decision of the United States Court of Appeals for the Fifth Circuit is allowed to stand federal prisoners located in non-federal institutions will be denied the remedies of the provisions of the Federal Tort Claims Act and the protection afforded by 28 U.S.C. § 4042. This could not have been the intent of Congress in enacting these statutes. In effect, even though they may not have been convicted of any crime, these federal prisoners will be denied the protection and remedies afforded other federal prisoners duly convicted and residing in federal institutions. This is additionally harsh as they may have no remedies against local jailers under local laws.

The totality of the circumstances in the instant case is such that common sense and reason dictate that the decision of the court of appeals be reversed. Logue's mental condition at the time was so extreme that it appeared to the Assistant United States Attorney in Laredo, 141 miles away, that Logue should be committed to a federal institution pursuant to 18 U.S.C. § 4244. The federal judge agreed. Had Logue been at Springfield under the same circumstances there would be no question as to the applicability of both the Federal Tort Claims Act and the duty of the United States Marshal to protect him. There should be no distinction merely because the Marshal, for his own convenience, chose to place him in the Nueces County jail, without making adequate arrangements for his supervision.

## ARGUMENT

### QUESTION (RESTATED)

**This Case Presents the Issue of Whether the United States May Exempt Itself for Injuries Negligently Caused to a Federal Prisoner by Relinquishing Supervision over the Prisoner to a Local County Jail Pursuant to a Contract Providing for Housing Federal Prisoners in the Jail.**

This Court held in *United States v. Muniz*, 374 U.S. 150 (1963) that federal prisoners were entitled to sue under the Federal Tort Claims Act for personal injuries sustained during confinement in federal institutions by reason of the negligence of government employees. The Court further held that such suits could be maintained regardless of whether the state law immunized jailers from such suit by their prisoners, since the duty of care owed by the government to federal prisoners is fixed by 18 U.S.C. § 4042, independent of any inconsistent state rule. *United States v. Muniz*, 374 U.S. at 163. The Court further noted that under the Act the government was not without defenses to suits by federal prisoners, but expressly declined to "... intimate any opinion upon their applicability to these complaints, since no such issue is presented for our review." *United States v. Muniz*, 374 U.S. at 163.

The district court in the case now before this court correctly found that the Deputy United States Marshal, knowing of Logue's propensity to attempt suicide, was negligent in not exercising reasonable care to provide for his protection by arranging for constant surveillance of Logue after removing him from the hospital; that the employees of the Nueces County jail, knowing of these serious suicidal tendencies, negligently failed to maintain an adequate surveillance of Logue while in the jail; and that the con-

tract between the United States and Nueces County for the housing of federal prisoners did not relieve the United States of its responsibility to Logue as a federal prisoner pursuant to 18 U.S.C. § 4042. (A. 607).

In reversing the trial court, the court of appeals specifically held *Muniz* was not applicable to a federal prisoner such as Logue.

The United States is subject to suit under the Federal Tort Claims Act for injuries suffered by federal prisoners confined in federal facilities. *United States v. Muniz*, 1963, 374 U.S. 150, 83 S.Ct. 1850, 10 L.Ed.2d 805. But we agree with the United States that *Muniz* does not extend to the situation now before us, where a federal prisoner is housed in a non-federal facility pursuant to Title 18, U.S.C., Section 4002. We interpret this section as fixing the status of the Nueces County jail as that of a "contractor". Title 18, U.S.C., Sec. 2671, footnote 2, *supra*. This insulates the United States from liability under the FTCA for the negligent acts or omissions of the jail's employees. We find no support in the record for holding that Deputy Marshal Bowers had any power or authority to control any of the internal functions of the Nueces County jail. The deputy marshal, accordingly, violated no duty of safekeeping with respect to the deceased. (A. 622).

a.

**The United States is liable for damages under the Federal Tort Claims Act for injuries resulting from the negligence of its employee, the United States Marshal regardless of the negligence of the Nueces County jailers.**

By its holding the United States Court of Appeals for the Fifth Circuit exonerated the United States not only from the negligence of the employees of Nueces County,

but also from the separate negligence of the United States Marshal, unquestionably the government's *own* employee. It is undisputed that 18 U.S.C. § 4042 explicitly charges the United States Marshal with the affirmative duty to provide for the safekeeping, care and protection of persons, like Reagan Logue, who are accused of a federal offense. (A. 625-626). It has not been contended that Logue's mental condition was such that another suicide attempt was unlikely; or that the Marshal lacked knowledge of his prisoner's serious suicidal tendency; or that the Marshal made any reasonably diligent effort to assure his prisoner's safety, care or protection by making adequate arrangements, under the circumstances, for his housing and supervision; or that if the Marshal had kept Logue in the hospital psychiatric unit, under his own custody, that the same tragic result would have occurred. The only reason advanced by the court of appeals in overturning the district court's finding of negligence on the part of the Marshal is its conclusion that there was no basis in the record for holding that he "had any power or authority to control any of the internal functions of the Nueces County jail." (A. 622).

As Chief Judge Brown in his dissenting opinion correctly points out, the Marshal's inability to control the internal functions of the jail is immaterial to his duty under 18 U.S.C. § 4042, to care for and protect federal prisoners.

Without initiating an extensive discourse on the state of the evidence—which seems to offer at least some tangible support for the theory that the Sheriff and his deputies were subject to the Marshal's control because they frequently complied with his informal instructions or suggestions—I need only point out that the question of the Marshal's authority to effect changes in the conditions of confinement is ac-

tually irrelevant here. The breach of the statutory duty of care occurred when Logue was confined under circumstances which the Marshal knew were inherently dangerous, in the absence of special precautions, regardless of what he may or may not have been empowered to do about the situation. Once the Government undertakes performance of an act entailing a duty of ordinary care it may not thereafter avoid liability under the Federal Tort Claims Act simply by abandoning the undertaking and attempting to attribute the responsibility to someone else. *Indian Towing Company v. United States*, 1955, 350 U.S. 61, 69, 76 S.Ct. 122, ....., 100 L.Ed. 48, 56; *United States v. Gavagan*, 5 Cir., 1960, 280 F.2d 319, cert. denied, 1961, 364 U.S. 933, 81 S.Ct. 379, 5 L.Ed.2d 365.

Rather than providing for Logue's safety, the Marshal simply abandoned him, thus breaching the duty of care which, "in the case of a mental patient, \* \* \* must be reasonably adapted and proportioned to his known suicidal, homicidal, or other like destructive tendencies." *United States v. Gray*, 10 Cir., 1952, 199 F.2d 239, 242. (A. 626-627).

The instant case presents a stronger argument for government liability than either *Indian Towing* or *Gray*, since here the United States was under a specific, statutory duty of care to all federal prisoners, regardless of their physical location at the time of injury—a factor obviously not within a prisoner's control. As Chief Judge Brown pointed out, in *Underwood v. United States*, 356 F.2d 92 (5th Cir. 1966):

... liability under the Act resulted from the Air Force's negligence in permitting a mentally deranged Airman to return to unrestricted duty and to draw from



the armory a pistol he subsequently used to kill his wife. There was no suggestion that liability was contingent upon the exercise of "authority" or "control" by the Government at the time of the shooting since liability arose only from the initial failure to utilize ordinary care. The same is true here—the Marshal's purported inability to arrange for the continuous observation of the prisoner does not excuse the *earlier* breach of the duty to provide a reasonably safe place of confinement. (A. 627).

The negligence imputed to the United States by the district court was that of its *own* employee in failing in his statutory duty to protect a federal prisoner, not the negligence of an independent contractor or its employees which, under certain circumstances invokes the exclusory provisions of 28 U.S.C. § 2671. (A. 631).<sup>1</sup> That the Federal Tort Claims Act by virtue of 28 U.S.C. § 2671 is evidence of the Congressional intent to retain to the United States the benefit of the traditional tort principle that an independent contractor is solely responsible *for his own torts* or that of its employees should not serve to expand this elementary principle by insulating the United States from the negligence of its employees in failing to perform a specific statutory duty, merely because Congress permits them to enter into contracts with third parties to house

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1. The negligence of the employees of the Nueces County jail and the application of whether the jail was a "contractor" under 28 U.S.C. § 2671 so as to exonerate the United States from liability for their negligence as "employees of a federal agency" is discussed below. It is not, and should not be applicable to the negligent acts of the United States Marshal or his deputies, because they are clearly "employees of a federal agency" and not "contractors".



federal prisoners pursuant to 18 U.S.C. § 4002. (A. 634).<sup>2</sup> In fact, the common law rule shielding the employer (in this instance the United States) from liability for injuries caused to another by an act or omission of the contractor of his servants is subject to so many exceptions recognized in law that it is said that such is the general rule "only in the sense that it is applied where no good reason is found for departing from it."<sup>3</sup>

b.

**The United States Marshal had a non-delegable duty to protect all federal prisoners by virtue of 28 U.S.C. § 4042 which imposes upon the United States liability under the Federal Tort Claims Act for the negligence of both its own employee, the United States Marshal and the employees of its contractor, the Nueces County jailers.**

Where the injured party is a federal prisoner and the injury occurred as the result of both the negligence of the United States Marshal *and* local jailers, there are additional reasons in law why the rule should not apply. The Fifth Circuit Court of Appeals in holding that the negligence of the state jailer's failure to keep Logue under constant surveillance cannot be attributed to the United States because the jail was a "contractor" within the meaning of 18 U.S.C. § 2671, ignores the portion of that statute

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2. The provisions of 18 U.S.C. § 4002 reflect that the intent of Congress was that local jails housing federal prisoners should be adequately guarded, sanitary and healthful. (A. 634). That statute has nothing to do with the duty to "(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States." 18 U.S.C. § 4042. (A. 633, emphasis added). Even prior to the enactment of these statutes United States Marshals have had the duty to protect federal prisoners. See, *Asher v. Cabell*, 50 F. 818, 827 (5th Cir. 1892).

3. Commentary, RESTATEMENT (SECOND) OF TORTS § 409 (1965) at 370.

relating to an "employee of the government" and conflicts with the decisions of the courts of appeal in *Witt v. United States*, 462 F.2d 1261 (2d Cir. 1972) and *Close v. United States*, 397 F.2d 686 (D.C. Cir. 1968).

That the United States and the Nueces County jail had in effect at the time of Logue's death a contract for the housing of federal prisoners is not the sole determinative issue regarding the liability of the United States for the negligence of the jail's employees. The Federal Tort Claims Act definition of an "employee of the government" includes not only "officers or employees of any federal agency," but also includes "persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States whether with or without compensation." 28 U.S.C. § 2671. (A. 632). That the Nueces County jailers were acting as federal jailers *vis-a-vis* Reagan Logue is apparent from the record of the case. This was precisely the basis for the United States Court of Appeals for the District of Columbia Circuit holding the United States liable for an injury to a federal prisoner temporarily housed in the District's jail.

Since the Congress has clearly committed the custody of and safekeeping of federal prisoners upon conviction to the Attorney General, *then it must be true that in this instance the D. C. jailer was serving as the Attorney General's jailer*; and it must also be true, or at least it does not appear to the contrary in the record before us, that as to this federal prisoner, the Attorney General had some degree of power, commensurate with his continuous responsibility to supervise the D. C. jailer and his handling of this particular prisoner. We note in this regard that, for the purposes of the FTCA, Congress has defined "Employee of the [federal] government" as including "persons

acting on behalf of a federal agency in an official capacity, temporarily or permanently in the services of the United States, whether with or without compensation." 28 U.S.C. § 2671. *Close v. United States*, 397 F.2d at 687. (Emphasis added).

Similarly, the United States District Court for the Northern District of Iowa in *In re Morgan*, 80 F.Supp. 810 (N.D. Iowa 1948) stated that:

[w]hen a federal prisoner is placed in custody of a state jailer, such a jailer becomes, so far as the detention of that prisoner is concerned, a federal jailer or keeper. 80 F.Supp. at 817.

Citing the *Close* case, the Second Circuit recently held in *Witt v. United States*, that the United States was liable under the Federal Tort Claims Act for breach of its statutory duty of care to a federal military prisoner under 10 U.S.C. 951(c),<sup>4</sup> even though the injury to the prisoner was caused solely by the negligence of a private person who had physical custody of the prisoner for purposes of having him perform work which the negligent party had contracted to do for a private association of military personnel.

The court rejected the government's argument that when the injured prisoner climbed into the contractor-tortfeasor's trailer, the responsibility of the United States for him stood at the curbside.

We take a different view. On the day of the accident, the Commandant of the Disciplinary Barracks had "custody of all offenders sent there" and was under a duty to "control and employ offenders as he considers best for their health and reformation . . .".

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4. Formerly, 10 U.S.C. § 3661 (repealed 1968).

Such a duty may not be absolutely non-delegable, as Witt asserts, but in our view, the duty is an important and broad one. It should not be sidestepped simply by having McQuirk [the private tortfeasor] rather than a permanent employee or an enlisted man transport the prisoners and similarly the duty should not be affected because a particular work detail was "voluntarily" chosen in lieu of other regular work assignments. *Witt v. United States*, 462 F.2d at 1265.

As in *Close* and *Witt*, the United States was under an affirmative statutory duty in the instant case to care for and protect their prisoners. Petitioners submit that 18 U.S.C. § 4042 imposes an absolute, non-delegable duty that cannot be avoided by the relinquishment of supervision over a federal prisoner, especially where the person or governmental entity to which supervision is relinquished is clearly acting on behalf of the United States in an official capacity.<sup>5</sup>

The concept of non-delegable duty is a recognized exception to the rule that insulates employers from liability for acts or omissions of their contractors.

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5. The Court should also note the decision of the Ninth Circuit in *Williams v. United States*, 405 F.2d 951 (9th Cir. 1969) affirming the dismissal of a federal prisoner's cause of action based on 18 U.S.C. § 4042 against the county officials on the grounds that that statute created a cause of action only against the United States. On remand the district court held, as did the court of appeals in the instant case, that the United States could not be held liable for the negligence of the county officials, since the county was a "contractor". *Williams v. United States*, Civil No. 3241-SD-S, Southern District of California, April 1, 1971. Counsel for Petitioners herein has been informed that the appeal of that decision has been dismissed. For a case that questions the reasoning of the district court's opinion in *Williams*, see *Brown v. United States*, 342 F.Supp. 987, 997-998 (E.D. Ark. 1972), involving an injury to a federal prisoner while he was held in the Pulaski County Jail in Little Rock, Arkansas. The conditions in the Pulaski County Jail were held violative of the Eighth and Fourteenth Amendments in *Hamilton v. Love*, 328 F.Supp. 1182 (E.D. Ark. 1971).

One who by statute or by administrative regulation is under a duty to provide specified safeguards or precautions for the safety of others is subject to liability to the others for whose protection the duty is imposed for harm caused by the failure of a contractor employed by him to provide such safeguards or precautions. RESTATEMENT SECOND OF TORTS, § 424 (1965).<sup>6</sup>

While this is the law in Texas,<sup>7</sup> and under 28 U.S.C. § 2674 the United States is to be judged as would a private individual under like circumstances, it is Petitioners' primary contention that under *federal law*, 18 U.S.C. § 4042, the duty of care and protection of federal prisoners is fixed on the United States and the United States should not be allowed to avoid that duty by simply substituting local jailers for United States Marshals pursuant to a contract.

As Chief Judge Brown pointed out regarding this case:

Moreover, when the Government decides that a particular individual should assume obligations and responsibilities virtually identical to those of a salaried Federal employee, there may very well be some persuasive basis for the suggestion that such an individual's breach of a specific statutory duty owed by the salaried employee to a specific class of person should visit identical liability upon the United States. *Obviously there is more than a subtle distinction between a "contractor" who breaches a duty of reasonable care*

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6. Statutes that impose a duty to use reasonable care to provide safeguards or precautions (as opposed to statutes imposing an absolute duty) still subject the employer to liability if the contractor has failed to exercise such reasonable care. Commentary, RESTATEMENT (SECOND) OF TORTS, § 424 at 411-412 (1965).

7. See, *H. & G. N. R. R. Co. v. Meador*, 50 Tex. 77 (Tex.Sup. 1878); 30 Tex.Jur.2d *Independent Contractors* § 25 (1962).

owed to the world at large and a "contractor" who performs specific custodial functions that under a plain Congressional mandate would ordinarily entail a definite obligation of due care owed to a discrete (and particularly vulnerable) class of people. If only for the sake of uniformity and the avoidance of formalistic legal distinctions totally divorced from the realities of the situation, further consideration of the problem might inevitably lead to the conclusion that the Sheriff and his deputies were "employees" within the meaning of the Act, particularly in light of the principle that "the Government's liability is no longer restricted to circumstances in which government bodies have traditionally been responsible for misconduct of their employees. The Act extends to novel and unprecedented forms of liability as well." *United States v. Muniz*, 1963, 374 U.S. 150, 159, 83 S.Ct. 1850, ....., 10 L.Ed.2d 805, 813. As has long been recognized, "the Federal Tort Claims Act waives the Government's immunity from suit in sweeping language." *United States v. Yellow Cab Company*, 1951, 340 U.S. 543, 547, 71 S.Ct. 399, ....., 95 L.Ed. 523, 528. (A. 628-629, emphasis added).

c.

**The degree of control which could be asserted by the United States Marshal, with the consent of the Nueces County jail, over federal prisoners in that jail was such that the jailers became servants of the United States and the United States is liable under the Federal Tort Claims Act for their negligence.**

As regards the care and protection of Reagan Logue, the employees of the Nueces County jail were, in fact, acting as federal jailers and were subject to the actual control

of the United States Marshal. Regardless of the legal power, authority or right<sup>8</sup> of the Marshal to control the internal functions of the Nueces County jail, it is clear from the record of this case that the Marshal at all times was able to exercise, with the full cooperation of the jail's employees, actual control so as to adequately provide for the care and protection of federal prisoners housed there. Unfortunately, in this instance, as the trial court properly found, the Marshal failed to exercise this prerogative and the result was Logue's death.

The County Jailer, Tom Lowrance, at the trial testified that whenever unusual circumstances arise regarding a federal prisoner, as in this case, it is the unwavering policy of the Nueces County jail to immediately contact the United States Marshal so that *he* can make the decisions as to how the situation is to be handled. (A. 437-438). Accordingly, when Logue made his first attempt at suicide by slashing his wrists, Lowrance immediately contacted the United States Marshal in Houston through the local federal probation office, and was instructed by them to place Logue in the hospital under guard until Deputy Marshal Bowers could be dispatched to Corpus Christi to take charge. (A. 96-97; 254-255; 322-324; 421). Before Logue was removed from the hospital back to the jail, Bowers'

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8. "We find no support in the record for holding that Deputy Marshal Bowers had any authority or power to control any of the internal functions of the Nueces County Jail." (A. 622). This finding of the Court of Appeals obviously relates to the lack of legal authority on the part of the United States Marshals as federal officers to perform the functions of jailers in state facilities controlled by state statutes, not actual control, inasmuch as the United States on appeal did not seek to overturn the trial court's findings of negligence on the part of the Marshal as being "clearly erroneous". (See Appellant's Brief at p. 8). Rather, the government contended, and the panel in this case apparently agreed, that the United States Marshal had "no duty" to make specific arrangements for constant surveillance of Logue because it had "no power or authority to control any of the internal functions of the Nueces County Jail." (A. 622).



supervisor, Deputy Marshal Jones advised Lowrance in detail by telephone of the measures he wanted taken to ensure Logue's safety, including the inspection and stripping of the cell and surveillance of the prisoner by employees of the jail. (A. 383-384, 401, 408). Thereafter, Jones instructed Bowers to personally inspect the jail to see that the proper arrangements had been made pursuant to his instructions. (A. 385). Accordingly, Bowers did this (A. 333-335), and, presumably, was satisfied with what he saw. Deputy Marshal Jones testified that the Nueces County jail never refused his requests regarding the care of federal prisoners. (A. 405, 406). The fact that these precautionary instructions given by the United States Marshal to Lowrance amounted only to the standard measures ordinarily used by the jail, and were limited to merely placing Logue in a stripped cell without his clothing where he could be periodically observed by the jailers when they passed his cell (A. 435-448), is indicative of the negligence of the United States Marshal and the jailers, not of the degree of control the Marshal could have exercised over the jail to insure the prisoner's safety had he chosen to do so.<sup>9</sup>

Based upon this and the other evidence reflected in the record, the district court found that the failure of the

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9. In light of the testimony regarding the close cooperation and willingness of the jail to accommodate the request of the Marshal regarding federal prisoners, there is no reason that the Marshal would not have been allowed to have a deputy or other federally-employed guard maintain a constant surveillance over Logue while in jail as the Marshal felt he was compelled to do at the hospital. (A. 331-332, 340, 341). Likewise, provision could have been made to at least approximate the relatively safe arrangements that existed in the hospital room. (A. 112). Clearly, the Marshal had no more or less authority to "control" the internal functions of the hospital than he did the jail. Just as the hospital deferred to the Marshal's arrangements to safeguard his prisoner, there is no justification to be drawn from the record that the jail would not do the same.



United States Marshal to make specific arrangements for the constant surveillance of Logue so as to ensure his safety, care and protection pursuant to 18 U.S.C. § 4042 constituted negligence. (A. 607).<sup>10</sup> Both under Texas Law<sup>11</sup> and by federal statute, Reagan Logue as a prisoner was entitled to be protected by the United States Marshal. This duty was enhanced and its requirements made more stringent by the Marshal's full and complete knowledge of Logue's suicidal tendencies, and, inasmuch as the jail was willing to comply with the Marshal's instructions regarding federal prisoners, the Marshal was required to take reasonable precautions to prevent Logue from taking his own life while in jail. *Jones v. United States*, 399 F.2d 936, 941 (2d Cir. 1968); *United States v. Gray*, 199 F.2d 239 (10th Cir. 1952); *Cohen v. United States*, 252 F.Supp. 679, 687-8 (N.D. Ga. 1966), *rev'd on other grounds*, 389 F.2d 689 (5th Cir. 1967); *Merchants Nat'l Bank & Trust Company of Fargo v. United States*, 272 F.Supp. 209 (N.D. 1967); *Arlington Heights Sanitarium v. Deaderick*, 272 S.W. 497 (Tex.Civ.App.—San Antonio 1925, no writ); cf., *Emelwon, Inc. v. United States*, 391 F.2d 9 (5th Cir. 1968).

The facts above not only support the conclusion that the employees of the jail were "acting on behalf of a federal agency in an official capacity" as was found in *Close v. United States*, *supra*, but the same facts also make it clear that at least with regard to the care and safekeeping of Reagan Logue after his return to jail from the hospital, that the jailers were acting as the "servants" of the United

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10. Even if no fault can be attributed to the United States Marshal in returning Logue to the jail until he could be transferred to the federal installation at Springfield, this duty at least obligated them to adequately inform the jailers of the necessity for his constant surveillance. *Underwood v. United States*, 356 F.2d 92 (5th Cir. 1966).

11. See, *Browning v. Graves*, 152 S.W.2d 515 (Tex.Civ.App.—Ft. Worth 1941, writ ref'd).

States Marshal and not as an "independent contractor." The main distinction between the independent contractor and the master-servant relationship is in the degree of control or right of control retained by the employer over the details of the work. *Strangi v. United States*, 211 F.2d 305, 307 (5th Cir. 1954). As seen above, the United States Marshal actually exercised a high degree of control over the details of Logue's reincarceration at the Nueces County jail. This control was entirely consistent with the master-servant relationship that had always existed between the Marshal and the jail with regard to the care and protection of federal prisoners, especially in emergency situations. Under the circumstances of this case, the jailers were not free of the control and influence of the United States Marshal and were, for want of a better description, its "loaned servants".<sup>12</sup> The fact that a contract<sup>13</sup> existed between the United States and the Nueces County jail to keep prisoners should not be allowed to obscure the true, master-servant relationship between the parties at the time in question.<sup>14</sup>

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12. See, *Fries v. United States*, 170 F.2d 726 (6th Cir. 1948), cert. denied, 336 U.S. 954 (1949); *Martarano v. United States*, 231 F.Supp. 805 (Nev. 1964).

13. The contract between the United States and Nueces County reflects that the County does not have exclusive custodial control of federal prisoners, but is subject to the laws of the United States, regulations of the Bureau of Prisons and instructions of the United States Marshal relating to those prisoners. (Pl. Ex. 5, A. 638-642).

14. See, *Schetter v. Housing Authority of the City of Erie*, 132 F.Supp. 149 (W.D. Pa. 1955).

d.

The reincarceration of Logue in the Nueces County jail was an illegal act under Texas law and the contract between the United States and Nueces County was invalid as it pertained to him, and accordingly, the United States is liable for the negligence of both its own employee, the United States Marshal and the employees of its contractor, Nueces County.

Insofar as the contract between the United States and Nueces County pertained to the detention of Reagan Logue after it was learned that he had been diagnosed as acutely psychotic and suicidal it was illegal under Texas law. Article 5115, Texas Revised Civil Statutes provides in pertinent part:

\* \* \*

#### SUITABLE SEGREGATION

\* \* \*

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of seven (7) days. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less

than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

\* \* \*

Act July 22, 1876, p. 52; G. L. vol. 8, p. 888. Amended by Acts 1957, 55th Leg., p. 637, ch. 277, § 1.

There is no question that both the United States Marshal and the jailers knew of Logue's mental condition.<sup>15</sup> It is inconceivable that the United States seeks to impose a contractual defense to an obviously illegal act once they knew of Logue's psychotic condition. It is axiomatic that an employer cannot contract for an illegal purpose and thereby shield himself from civil liability by reliance on the doctrine of independent contractor. *Moore & Savage v. Kopplin*, 135 S.W. 1033, 1036-1037 (Tex.Civ.App. 1911, writ ref'd).

The appointment of an agent to do an act is illegal if an agreement to do such an act would be criminal, tortious, or otherwise opposed to public policy. RESTATEMENT (SECOND) OF AGENCY, § 19 (1958).

An employer is subject to the same liability as his contractor for the consequences of the contractor's illegal conduct resulting from the employer's directions.<sup>16</sup>

Had the statute not been violated by reincarcerating Logue in the Nueces County jail, the second, and successful, attempt to destroy himself would have been avoided.

15. Dr. White testified that Logue "was mentally ill at the time: insane if you wish. He could not differentiate reality; he was actively hallucinating at the time." (A. 111).

16. See, *McDaniel Bros. v. Wilson*, 70 S.W.2d 618 (Tex.Civ. App.—Beaumont 1934, writ ref'd); RESTATEMENT (SECOND) OF AGENCY, § 212 (1958); cf. *Hatahley v. United States*, 351 U.S. 173 (1956); *Simons v. United States*, 413 F.2d 531 (5th Cir. 1969).

In not allowing recovery to federal prisoners incarcerated in non-federal institutions a non-congressional exception to the Federal Tort Claims Act is created and the congressionally-imposed duties imposed by 28 U.S.C. § 4042 as they relate to such prisoners are destroyed.

The decision of the Court of Appeals denying the Federal Tort Claims Act remedy to federal prisoners in state jails is clearly offensive to the principle announced by this Court in *Rayonier, Inc. v. United States*, 352 U.S. 315, 320 (1957), and reaffirmed in *United States v. Muniz*:

"There is no justification for this Court to read exemptions into the Act beyond those provided by Congress. If the Act is to be altered that is a function for the same body that adopted it." *United States v. Muniz*, 374 U.S. 150, 166 (1963).

It would truly be anomalous if the court of appeals decision immunizing the United States from liability for injuries to its own prisoners to whom it owes a statutory duty of care is allowed to stand at a time when judicial impatience with the doctrine of sovereign immunity has led to its abrogation or dilution by judicial decision in state after state.<sup>17</sup>

17. See e.g., *Stone v. Arizona Highway Commission*, 381 P.2d 107 (Ariz. 1963); *Parish v. Pitts*, 429 S.W.2d 45 (Ark. 1968); *Muskopf v. Corning Hospital District*, 359 P.2d 457 (Cal. 1961); *Proffitt v. State of Colorado*, 482 P.2d 965 (Colo. 1971); *Hargrove v. Town of Cocoa Beach*, 96 So.2d 130 (Fla. 1957); *Smith v. Idaho*, 473 P.2d 937 (Idaho 1970); *Molitor v. Kaneland Community Unit District No. 302*, 163 N.E.2d 80 (Ill. 1959); *Campbell v. State*, 284 N.E.2d 733 (Ind. 1972); *Carroll v. Kittle*, 457 P.2d 21 (Kan. 1969); *Haney v. City of Lexington*, 386 S.W.2d 738 (Ky. 1964); *Williams v. City of Detroit*, 11 N.W.2d 1 (Mich. 1961); *Spanel v. Mounds View School District*, 118 N.W.2d 795 (Minn 1962); *Brown v. City of Omaha*, 160 N.W.2d 805 (Neb. 1968); *Rice v. Clark County*, 382 P.2d 605 (Nev. 1963); *McAndrew v. Mularchuk*, 162 A.2d 820 (N.J. 1960); *Barker v. City of Santa Fe*, 136 P.2d 480 (N.M. 1943); *Becker v. Beaudoin*, 261 A.2d 896 (R.I. 1970); *Honaman v. City of Philadelphia*, 185 A. 750 (Pa. 1936); *Holytz v. City of Milwaukee*, 115 N.W.2d 618 (Wisc. 1962); see also, *Krause v. Ohio*, 274 N.E.2d 321 (1971), rev'd, 285 N.E.2d 736 (Ohio 1972), appeal filed, United States Supreme Court No. 72-589, October 10, 1972.

Under the provisions of 18 U.S.C. § 4042 the United States has the duty to provide for the safekeeping, care and protection of all persons charged with or convicted of offenses against the United States. The United States pursuant to Title 18 U.S.C. § 4002, solely for its own convenience, frequently houses federal prisoners in local jail facilities. The holding that the Section 4042 duty does not extend to federal prisoners housed in state facilities judicially creates a division of federal prisoners into two classes—those housed in federal facilities who will continue to enjoy the protection of the duty of 18 U.S.C. § 4042 and the remedy for its breach, and those temporarily located or about to be placed in non-federal facilities, who are now denied the benefit of this duty and its Federal Tort Claims Act remedy.

The district court specifically found that Deputy Marshal Bowers made no specific arrangements for constant surveillance of the prisoner, and that this was negligence. (A. 608). It found that this negligence was a proximate cause of his death. (A. 609). By reversing this holding, a federal prisoner in a state penal facility is arbitrarily denied his Federal Tort Claims Act remedy notwithstanding proof that a federal employee's negligence was a proximate cause of the injuries he sustained.

While the Fourteenth Amendment's equal protection clause does not specifically apply to acts of Congress or the federal government, the Supreme Court of the United States has held that federal classifications may be so unjustifiable as to be violative of due process. *Bolling v. Sharpe*, 347 U.S. 297 (1954). The District of Columbia Circuit Court of Appeals has held that the equal protection guaranty applies to the federal government through the Fifth Amendment.<sup>18</sup>

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18. *Bolton v. Harris*, 395 F.2d 642, 645 n. 3 (D.C. Cir. 1968); *Lee v. Habib*, 424 F.2d 891, 898 note 21 (D.C. Cir. 1970).



The United States should not be permitted to abdicate its congressionally imposed duty to local jails simply because it is more convenient for the federal government to temporarily house federal prisoners in these jails, rather than building and staffing adequate federal facilities. Published statistics are unavailable, but it is estimated that the Bureau of Prisons has an average of 800 contracts with state and local jails to provide housing for federal prisoners.<sup>19</sup> While these "contract jails" hold very few of the federal prisoners who have been tried and sentenced,<sup>20</sup> they hold the overwhelming majority of those who are "pre-trial detainees"—persons arrested and detained in connection with federal offenses. Again, published data is lacking, but the Bureau of Prisons estimates that on any given day there is an average of 4,000 unsentenced federal prisoners in non-federal facilities. This figure stands in sharp contrast to the number of unsentenced federal prisoners in federal facilities: 652 for the week ending August 10, 1971.<sup>21</sup> With the dockets of the federal courts becoming increasingly more congested, there is little doubt that the number of unsentenced federal prisoners in local jails will steadily rise in the future. The point to be made, of course, is that the United States government has made the "contract jail" a necessary and apparently permanent part of the federal criminal justice system, and that the number

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19. The statistics and estimates relating to federal prisoners and to the number of federal contracts with local jails were given to counsel for Petitioners by the Office of the General Counsel, Federal Bureau of Prisons. According to that office, however, the information was actually provided by the Bureau's Division of Community Services.

20. The number of sentenced federal prisoners in non-federal facilities in September, 1973, was reported to be only 246 (173 women, 33 men, and 40 juveniles).

21. See "Federal Prisoners Confined Week Ended 08/10/72", provided by the Federal Bureau of Prisons' Community Services Division through the Bureau's Office of General Counsel. (A. 635).

of persons affected by the decision to deny federal prisoners in those jails the right to the statutory duty of care of 18 U.S.C. § 4042 and the Federal Tort Claims Act remedy for its breach is substantial.

But there is a deeper, fundamentally moral reason why the Petitioners should prevail in this case, and that is that the conditions to which the federal government subjects its prisoners when it turns them over to local jails are, as a general rule, abhorrent. In case after case, both federal and state courts are finding that the treatment of prisoners in local jails violates basic standards of human decency.<sup>22</sup> Overcrowding, inadequate supervision, no separa-

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22. See e.g. *Brenneman v. Madigan*, 343 F.Supp. 128 (N.D. Cal. 1972) (Alameda County, California); *Hamilton v. Love*, 328 F.Supp. 1182 (E.D. Ark. 1971) (Pulaski County, Arkansas); *Jones v. Wittenberg*, 323 F.Supp. 93 (N.D. Ohio 1971), *aff'd sub nom.*, *Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972) (Lucas County, Ohio); *Hamilton v. Schiro*, 338 F.Supp. 1016 (E.D. La. 1970) (Orleans Parish, Louisiana). *Bryant v. Hendrick*, (Phila. C.P.) *aff'd*, 280 A.2d 110 (Pa. Sup. Ct. 1971). For a summary of the lower court opinion in *Bryant* see 7 Crim. L. Rep. 2463. See also *Jackson v. Hendrick*, (Phila. C.P. 1972) summarized in 40 U.S.L.W. 2710 (May 2, 1972), on appeal, No. 576CD 1972, in the Commonwealth Court of Pennsylvania.

Inquiries made of the attorneys for the plaintiffs in the foregoing cases revealed that federal prisoners are presently housed in Pulaski County Jail in Little Rock (*Hamilton v. Love*, *supra*), and in Orleans Parish Jail in New Orleans (*Hamilton v. Schiro*, *supra*), although they have been removed to an annex in the latter instance. Apparently as the result of the litigation in *Jones v. Wittenberg*, *supra*, the Lucas County Sheriff is presently refusing to accept federal prisoners in the Local County Jail, Toledo, Ohio. All federal prisoners are now housed in nearby Adrian, Michigan and transported to Toledo for federal court appearances. Despite the conditions found to exist in the Dallas County Jail (*Taylor v. Sterrett*, *infra*, note 20), federal prisoners are still kept in that facility. At the direction of the district court in *Brenneman v. Madigan*, *supra*, in March 1971, the U.S. Marshal stopped placing federal prisoners in the Greystone section of Alameda County's Santa Rita Rehabilitation Center. Improvements have been made in that facility, however, the federal prisoners are again housed therein. Federal prisoners were withdrawn from Holmesberg jail, Philadelphia County (*Bryant v. Hendrick*, *supra*), after the prisoner riot in July, 1970. Federal prisoners are still housed in Philadelphia's Detention Center and House of Correction (*Jackson v. Hendrick*, *supra*), although nearby state penal institutions are also used.



tion from dangerous and contagiously ill prisoners, substandard medical care, exposure to extreme temperatures, unsanitary kitchen and bathing facilities, and the risk of loss of life from fire are among the several outrages that the courts have found to constitute cruel and unusual punishment and a denial of due process and equal protection of the laws.<sup>23</sup> Such conditions are even more contemptible as they apply to those merely charged with crime, since the governmental interest in punishing criminal offenders, which might arguably justify some of the conditions found in the jails, is inapplicable to the treatment of persons whose guilt has not been proved.<sup>24</sup> As has been seen, the great bulk of the federal prisoners placed in these jails are in this category. According to the evidence developed in the instant case, the federal government does not require that its prisoners be separated from the state prisoners or

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23. Recently, a federal district court in Texas held that the conditions in the Dallas County jail violated the Texas statute detailing the minimum requirements for "safe and suitable jails" in the state. *Taylor v. Sterrett*, 344 F.Supp. 411 (N.D. Tex. 1972). The plaintiffs also challenged the constitutionality of the conditions, but the court chose to base its decision on Article 5115, Texas Revised Civil Statutes. While the conditions of the Nueces County jail, where the prisoner in the instant case was held, have not been the subject of litigation, they are certainly no better than those in the Dallas County jail. For a description of current conditions in the Nueces County jail, see McKinney, *Nueces Facility—trying experience for jailed, jailers*, The Corpus Christi Caller-Times, October 1, 1972, § A, at 6, col. 5, noting, *inter alia*, the increased burden placed on the jail by the rising number of illegal aliens detained there by the federal government. (A. 636-637).

24. In *Hamilton v. Love*, 382 F.Supp. at 1191, the court noted that the lot of those detained while awaiting trial appeared to be worse than that of those convicted and serving their sentences in the Arkansas state penitentiaries. The full impact of this observation cannot be felt until it is remembered that conditions in the Arkansas state penitentiaries have been found to violate the Eighth Amendment. *Holt v. Sarver*, 309 F.Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971). For a discussion of the pretrial detainee problem see, Note, *Incarcerating the Innocent: Pretrial Detention in Our Nation's Jails*, 21 Buff. L. Rev. 891 (1972); Note, *Constitutional Limitations on Conditions of Pretrial Detention*, 79 Yale L.J. 941 (1970).

that they be given any special treatment.<sup>25</sup> In short, the federal government each day relinquishes the supervision of thousands of persons whose guilt of any crime has not been established to local facilities which are woefully inadequate even for the state prisoners they must house. And, according to the United States Court of Appeals for the Fifth Circuit once the United States Government surrenders physical custody of a federal prisoner to such a facility it extinguishes its liability for whatever harm might befall that prisoner afterwards. As a matter of public policy and good conscience, this should not be the law.

In his opinion dissenting from the denial of rehearing en banc, in which Circuit Judges Goldberg and Wisdom joined, Chief Judge Brown posed the fundamental question in this case by way of analogy.

If a Deputy United States Marshal, after discovering a tubercular prisoner's critical physical condition, nevertheless decided to consign that individual to the custody of State authorities in a county jail without first determining whether the facilities provided adequate treatment for tuberculosis victims, and without even attempting to find out whether the conditions of confinement reasonably assured continued survival, I have difficulty believing that the Government's liability under the Federal Tort Claims Act for death resulting from lack of proper medical attention or from an unsanitary environment could be avoided with the bland assertion that the Marshal had no authority to convert the jail into a hospital. Since the facts of the present case are not materially different, I suggest that this serious and previously unresolved problem involving the care of Federal prisoners temporarily

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25. (A. 386-387).

confined under contract with State officials is of sufficient importance to merit en banc reconsideration by the Court. (A. 625).

But again, it is the manifest unfairness of allowing the United States to stand immune to liability for injuries to federal prisoners in local lockups that compels that the court of appeals decision be reversed by this Court. And again, it is Chief Judge Brown that best makes the point.

Apart from the difficulties posed by this case in isolation, its implications within the broader context of modern-day prison administration are even more disturbing. Overcrowding and substandard physical facilities inevitably have a progressively detrimental impact on the administrator's ability to insure the health, safety and welfare of those in his custody. Increasingly we are being forced to confront undeniable evidence that the inmates of many institutions routinely subject other prisoners to varieties of subhuman treatment that no citizen of a civilized nation, whatever his transgression against society, should be compelled to endure. That such outrages are inflicted upon those serving sentences following conviction is disgraceful. But when the victim charged with a Federal offense is merely confined temporarily in a State jail while awaiting transfer or release on bond, I hardly think we provide an acceptable answer when we tell him or his family that restitution for death or injury resulting from his custodian's culpable neglect is unavailable because the responsible official was wearing a State rather than a Federal badge. In such circumstances I cannot concede that despite the constable's blunder the Government must go free. (A. 629-630).

**CONCLUSION**

WHEREFORE, premises considered, Petitioners respectfully pray that the decision of the United States Court of Appeals for the Fifth Circuit be reversed and judgment be entered against the United States in conformity with the judgment of the district court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that three (3) copies of the foregoing document were served upon the United States by depositing same in the United States post office, with air mail postage affixed thereto addressed to the Solicitor General, Department of Justice, Washington, D.C. 20530 on this the 23rd day of February, 1973.

J. ROBERT McKISSICK

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# In the Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-656

ORVAL C. LOGUE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

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BRIEF FOR THE UNITED STATES

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## OPINIONS BELOW

The opinion of the court of appeals (A. 616-623) is reported at 459 F. 2d 408. The subsequent order denying rehearing and rehearing *en banc* and a dissenting opinion (A. 624-630) are reported at 463 F. 2d 1340. The opinion of the district court (A. 607-613) is reported at 334 F. Supp. 322.

## JURISDICTION

The judgment of the court of appeals was entered on May 1, 1972. A petition for rehearing was denied on July 31, 1972. The petition for a writ of certiorari was filed on October 28, 1972, and was granted on

January 8, 1973. The jurisdiction of this Court rests upon 28 U.S. C. 1254(1).

#### QUESTIONS PRESENTED

1. Whether a Deputy United States Marshal, in transferring custody of a suicidal federal prisoner to a state prison facility, satisfied his duty of care to the prisoner by relying on the representation of his supervisor that arrangements had been made for the jail to provide continuous observation of the prisoner, and on the assurance of the state jailer that those arrangements would be carried out.

2. Whether a state prison facility in which federal prisoners are placed pursuant to contract is a "contractor," whose employees, under the Federal Tort Claims Act, are not "employee[s] of the Government" for whose negligent acts the United States is liable.

#### STATUTES INVOLVED

The relevant provisions of 28 U.S.C. 1346(b), 2671, and 2674, and 18 U.S.C. 4002, 4042, and 4086 are set forth in Appendix A to this brief, *infra*, pp. 41-43.

#### STATEMENT

On May 25, 1968, Reagan Logue, a federal prisoner confined in a state prison pending trial, took his own life. His mother and adoptive father brought this action in the United States District Court for the Southern District of Texas seeking damages under the Federal Tort Claims Act. They alleged that Logue's death was proximately caused by the negligent acts of federal employees.

## A. THE INITIAL CONFINEMENT AND ATTEMPTED SUICIDE

On May 22, 1968, Deputy United States Marshal Del Bowers, temporarily assigned to Corpus Christi, Texas, was notified that a federal warrant had been issued for the arrest of Reagan Logue on a charge of conspiracy to smuggle 229 pounds of marihuana into the United States (A. 312, 607). In the company of two customs agents, he proceeded to Logue's residence and placed him under arrest (A. 299-301, 314-318). After a hearing before a United States Commissioner, Logue was taken to the Nueces County Jail in Corpus Christi, which assumed custody over him pursuant to a contractual arrangement with the Federal Bureau of Prisons, by which the jail agreed to provide for the safekeeping, care, and subsistence of federal prisoners awaiting trial (A. 302-303, 320-321, 638-642).

In the afternoon of the next day, Logue cut his left wrist in an apparent suicide attempt (A. 19, 607).<sup>1</sup> He was taken to Memorial Hospital, where he was treated by an intern, Dr. James White, who, after attending to the wound, diagnosed Logue as acutely psychotic, admitted him to the hospital, and administered a tranquilizer (A. 111-113).<sup>2</sup> Logue was placed

<sup>1</sup> He had twice before made suicide attempts or gestures, one involving an overdose of sleeping pills and one involving gas (A. 199, 229-230).

<sup>2</sup> Logue was at this time "actively hallucinating" and out of touch with reality (A. 111). Dr. White apparently thought that Logue's psychotic reaction was secondary to LSD or other drug ingestion (A. 157). The arresting officers had detected the odor of airplane glue in Logue's house (A. 301, 317).

in a locked, bare room guarded by an off-duty sheriff's deputy (A. 97, 112, 323-324, 499-500). That evening, Dr. Shannon Gwin, the hospital's staff psychiatrist, visited Logue and assumed responsibility for his care (A. 142-143, 155).

#### B. REMOVAL FROM THE HOSPITAL AND ARRANGEMENTS FOR RETURN TO THE JAIL

Deputy Bowers learned of the suicide attempt the next morning and proceeded to the hospital to check on Logue's condition. After observing security arrangements at the hospital and looking in on Logue, Bowers telephoned Dr. White, who informed him that Logue was admitted to the hospital because of his mental condition, not because of his wrist wound, which did not itself require continued hospitalization. He also advised Bowers to discuss the matter with Dr. Gwin because he had taken over as Logue's physician. (A. 322-327.)<sup>3</sup>

Dr. Gwin told Bowers he thought that Logue should be committed to a medical facility for rehabilitation, and that if he were returned to the jail in the meantime, precautions should be taken to prevent a further suicide attempt (A. 160, 327, 330, 333-334). He said he would release Logue from the hospital if there were a safe place to keep him at the jail (A. 343, 359,

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<sup>3</sup> Dr. White's memory was that he told Bowers the patient should not be returned to jail because of the risk that he would again attempt suicide (A. 113-114, 136-137). Bowers did not recall White's "saying anything like that" (A. 326); White stated only that Logue "had a mental problem and that he had turned the case over to Dr. Gwin" (A. 327).

361). On the basis of Dr. Gwin's recommendation, Bowers initiated efforts to have Logue committed to a federal medical institution for a competency determination.

In a telephone report to his supervisor in Laredo, Deputy Marshal Gerald Jones, Bowers sought advice on arranging for a commitment order from the federal district court there. Logue's attorney, who also participated in the conversation with Deputy Jones, stated that he had been unable to reach the Assistant United States Attorney to request his help in having Logue committed. Jones thereupon related the facts to the Assistant United States Attorney who, together with Jones, sought out District Judge Ben Connally in chambers. The judge indicated he would sign a commitment order. (A. 55-57, 330-331, 377-383.)

Meanwhile, Deputy Bowers had telephoned Chief Deputy Thomas Slocomb in Houston to report on Logue. Slocomb directed Bowers to stand by for further instructions. (A. 97-98, 332.) Slocomb then telephoned Jones and inquired whether the Nueces County Jail had suitable facilities for holding Logue from the time he could be discharged from the hospital until his transfer to a federal medical facility.<sup>4</sup> Jones said he would speak with Chief Jailer Tom Lowrance about the matter. (A. 98, 378-379.)

In a telephone conversation with Lowrance, Jones stated that Logue would shortly be moved to a federal

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<sup>4</sup> It ordinarily takes about a week or two after an order has been entered before a prisoner can be physically transferred to a mental institution, though the process can be expedited in an emergency (A. 100).

institution but that in the meantime he would probably be kept at the jail. Jones explained that Logue had attempted suicide and, in the doctor's judgment, remained suicidal. He inquired whether the jail could provide safe quarters for the prisoner and carefully detailed the special arrangements that would have to be made. In particular, he specified the cell must be one that "could be kept under surveillance" (A. 384), and it would have to be stripped of everything Logue could possibly use to hurt himself. Logue himself would have to be stripped of his clothing. (A. 98, 383-384, 401-402, 407.) Jones also suggested that jail "trusties" be placed either in the cell with Logue or outside the cell where they "could watch him continually" (A. 402).

Lowrance responded that he could and would make the arrangements specified by Jones. (A. 384, 407.)<sup>5</sup> Jones testified that, if his instructions had been followed by Lowrance, it would not have been possible for Logue to hang himself (A. 402); if Lowrance had given any indication that he would not follow those instructions, Jones would not have permitted Logue to be returned to the jail (A. 407).

Jones then telephoned Bowers, informed him of the conversation with Lowrance, and instructed him personally to inspect the jail to see that a cell was adequately prepared. If so, Bowers was to inform Dr.

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<sup>5</sup> Lowrance's recollection of the conversation was somewhat hazier. He testified that he placed Logue in a cell by himself where he could be checked periodically, and that he considered this to be consistent with the instructions given to him by Jones (A. 435, 445).



Gwin of the arrangements that had been made and to ask him whether he would release Logue from the hospital<sup>6</sup> pending the transfer to a federal institution. Jones instructed him that if Dr. Gwin did not consider it advisable to release Logue, Bowers should leave him in the hospital. (A. 97-98, 353, 385, 403.)<sup>6</sup>

Bowers inspected the cell prepared for Logue and found that it contained only a bunk with a mattress, a commode, and a wash basin; all other objects had been removed (A. 334-335). He then advised Dr. Gwin that the court had ordered Logue committed to a federal institution for observation and that special provisions had been made to keep him at the jail until he could be taken to the institution. Bowers stated that he had inspected the jail facilities and that in his judgment Logue would be safe there. Dr. Gwin said that under those conditions he would agree to release Logue. (A. 336, 348-349.)<sup>7</sup>

When Bowers took Logue back to the jail later that day, he personally checked the cell again and satisfied himself that it contained nothing dangerous. He had been told by Jones that the jail would keep

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<sup>6</sup> It was the unwavering policy of the Marshal's office that no prisoner would be removed from a hospital unless and until his physician released him (A. 393, 396-397), and Bowers was given specific instructions by both Jones and Slocumb to move Logue only if Dr. Gwin was prepared to release him (A. 343, 359, 362, 385, 403). It is also a policy to return a prisoner to jail as soon as possible, both for security reasons and because of economic considerations (A. 341, 347-348, 392), though the prisoner's health and safety are the first concern (A. 368).

<sup>7</sup> Dr. Gwin testified he had been under the impression that the court had ordered Logue returned to jail and that the matter was out of his hands (A. 160, 166).

Logue under observation, possibly by a "trusty" in an adjoining cell, and it was his clear understanding that suitable arrangements had been made for such observation. He also received assurances at the jail that someone would be watching Logue. Indeed, he testified that if he had not thought Logue would be kept under surveillance, he would not have left him there. (A. 345-346, 352-353.)

After leaving the jail, Bowers reported to Chief Deputy Slocomb that Logue had been recommitted to the jail. He stated that Logue's cell had been stripped of all dangerous objects and that it was "convenient for observation by the jail authorities" (A. 98).

#### C. PROCEDURES AT THE JAIL

Logue was placed in the cell prepared for him, which was part of the isolation block on the second floor. He was within hearing but out of sight of the other prisoners in an adjoining block on that floor (A. 23-24, 434). Chief Jailer Lowrance did not place trustees in the cell with Logue or nearby, and assigned no one the task of watching Logue. His instructions to his staff were "to check him and watch him all the time" (A. 439),<sup>\*</sup> but this apparently was intended by him and understood by the staff to mean checking Logue periodically when they had other business on the second floor. The other prisoners were not told of Logue's condition and were not asked to watch him (A. 24).

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<sup>\*</sup> One jailer was told to "keep an eye on" Logue (A. 475); another was told "to keep pretty close watch on him" (A. 486).

Lowrance personally checked on Logue as many as six times the following day, usually in connection with bringing other prisoners to the second floor (A. 438-439). Other jailers also checked him several times (A. 451, 464, 469, 486). At 4:45 p.m. on May 25, some 15 minutes after he had been last observed, Logue was found by one of the jailers hanging in his cell (A. 450). He had apparently fashioned a noose out of the long Kerlix bandage that had been applied to his left arm at the hospital (A. 609).

#### D. THE PROCEEDINGS BELOW

The district court awarded petitioners damages of \$6,164.50, representing pecuniary benefits lost to them plus Logue's funeral expenses (A. 611-613). It found that the government had been negligent in two respects, each of which was the proximate cause of Logue's death: (1) Deputy Bowers' failure to make "specific arrangements \* \* \* for constant surveillance of the prisoner" (A. 608), and (2) the failure of the jailers to maintain adequate surveillance (A. 609). It held that the United States is not relieved of its responsibilities to those of its prisoners who are kept in a state prison facility pursuant to contract; rather, it is "bound" by the negligent acts of the jail's employees (A. 610-611).<sup>9</sup>

The court of appeals reversed. It held (1) that, since Deputy Bowers had no "power or authority to con-

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<sup>9</sup> The court also held that the decision to remove Logue from the hospital and return him to the jail was a "discretionary" act which, under 28 U.S.C. 2680(a), could give rise to no liability on the part of the United States (A. 610).

trol any of the internal functions of the Nueces County jail," he "violated no duty of safekeeping with respect to the deceased" (A. 622), and (2) that the status of the jail as a "contractor" under 28 U.S.C. 2671 "insulates the United States from liability under the FTCA for the negligent acts or omissions of the jail's employees" (*ibid.*).<sup>10</sup>

#### SUMMARY OF ARGUMENT

##### I

A United States Marshal is under a duty to provide for the safekeeping and care of federal prisoners in his custody. If he commits a negligent act or omission proximately causing injury to such a prisoner, the United States is liable under the Federal Tort Claims Act.

The court of appeals properly held that Deputy Bowers' duty of care in the circumstances of this case did not require that he personally make arrangements for Logue's surveillance at the jail. He had a reasonable basis for believing that adequate preparations had already been made for the safekeeping of Logue. His supervisor had stated that the chief jailer agreed to place Logue in a stripped cell and to keep him under constant observation, and Bowers confirmed those

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<sup>10</sup> On the denial of a petition for rehearing and rehearing *en banc*, three judges filed a dissenting opinion in which they expressed the view that Bowers failed to comply with a "duty to provide a reasonably safe place of confinement" (A. 627) and that the state jailers, in dealing with a federal prisoner, may have taken on the character of federal employees for purposes of federal tort liability (A. 628).

plans by personally inspecting the jail and speaking with the jailers. Under these conditions Bowers could not reasonably foresee that the chief jailer, a veteran prison official, would not follow the instructions given to him for Logue's care, and he was not negligent in turning Logue over to the jail.

## II

The Federal Tort Claims Act imposes liability on the United States only for the negligent acts of an "employee of the Government" (28 U.S.C. 1346(b)). The negligent state jailers were not "employees of the Government" because the jail was not a "federal agency" under the Act and because the jailers were not "acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States" (28 U.S.C. 2671).

The Act's definition of "federal agency" excludes "any contractor with the United States" (*ibid.*), and the Nueces County Jail is a contractor. The principle underlying the contractor exclusion is central to the Act: that the United States, like a private person in similar circumstances, should not be held liable for the acts of those over whom it has no right of close supervision. Except where the United States has the authority to control the physical conduct of the contractor's employees in the performance of their duties under the contract, it is not liable for their torts. It is evident from the statute authorizing the Bureau of Prisons to contract for the housing of federal prisoners, from the contract with Nueces County, and from the

practice under that contract, that the United States has no such right of control over the jail's employees. The jail is, therefore, a "contractor" and not a "federal agency."

Similarly, the jail's employees were not "acting on behalf of" the Bureau of Prisons "in an official capacity \* \* \* in the service of the United States \* \* \*." That clause was not meant to depart from the fundamental principle of *respondeat superior*; it covers only persons who act under the direct supervision of the United States but whose relationship is other than one of employment, such as a "dollar-a-year" man or a member of a government advisory commission.

The Congress could not have intended that the United States be held liable for acts it has no authority to control or prevent. Under the theory advanced by petitioners, however, the government would be subjected to a potentially large burden of liability that it could not, as a practical matter, avoid. It has no authority to place federal employees in each of the 800 "contract" jails in the states, and, even if it did, a single person could not effectively control the state jailers' physical conduct in their handling of federal prisoners.

Finally, there is no basis for the contention that the Bureau of Prisons' statutory duty of care is "nondelegable." The legislation imposing that duty also gave the Bureau authority to enter contracts with state prisons. Moreover, petitioners' theory would impose on the government absolute liability without regard to fault. As this Court has held, the Act provides for

liability only for the wrongful or negligent acts of government employees and does not allow recovery based upon absolute liability.

#### ARGUMENT

- I. THE DEPUTY MARSHAL VIOLATED NO DUTY OWED TO LOGUE; HE MET THE STANDARD OF DUE CARE BY RELYING ON THE ASSURANCES OF HIS SUPERVISOR AND THE COUNTY JAILER THAT LOGUE WOULD BE KEPT UNDER CONTINUOUS OBSERVATION

This Court held in *United States v. Muniz*, 374 U.S. 150, that a person may recover under the Federal Tort Claims Act for personal injuries sustained during confinement in a federal prison that were caused by the negligent acts of a federal employee. Although the Act specifies that the liability of the United States is to be determined "in accordance with the law of the place where the act or omission occurred" (28 U.S.C. 1346(b)), the Court in *Muniz* held that "the duty of care owed by the Bureau of Prisons to federal prisoners is fixed by 18 U.S.C. § 4042" (374 U.S. at 164-165). That section requires the Bureau of Prisons to "provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States" and to "provide for the protection, instruction, and discipline" of such persons.<sup>11</sup>

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<sup>11</sup> Texas law at the time of Logue's death would have barred a suit against the state or the county for damages based on the negligence of the jail's employees. The State could not be sued without its consent (*Hosner v. De Young*, 1 Tex. 764), and it had not consented to suits on such tort claims. Although coun-

A United States Marshal owes a similar duty to a federal prisoner in his custody. He must, under 18 U.S.C. 4086, "provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution." If, therefore, a marshal commits a negligent act or omission proximately causing injury to a federal prisoner in his custody, the United States is liable for damages under the Federal Tort Claims Act.

The question here is whether Deputy Marshal Bowers was guilty of any negligent act or omission that proximately caused Logue's death. The district court found that Bowers failed to make "specific arrangements" for the constant surveillance of Logue at the county jail (A. 608), and it concluded that this omission meant that his conduct failed to meet the applicable standard of care—*i.e.*, the "care necessary to make certain the prisoner did not commit suicide while in jail" (A. 610). The court of appeals did not set aside the narrow factual findings concerning Bow-

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ties and municipalities could be sued (Tex. Rev. Civ. Stat., Arts. 962, 1573), they were not liable for the torts of their employees. *City of Tyler v. Ingram*, 139 Tex. 600, 164 S.W. 2d 516; *Harris County v. Gerhart*, 115 Tex. 449, 283 S.W. 139. A negligent jailer, however, apparently could be held personally liable. See *Browning v. Graves*, 152 S.W. 2d 515 (Tex. Civ. App.).

The Texas Tort Claims Act, Tex. Rev. Civ. Stat., Art. 6252-19, effective January 1, 1970, has waived the immunity of state governmental units generally with respect to injury caused by the negligent acts of employees arising from the operation of automobiles or caused by the condition or use of real or tangible personal property. It is unclear whether the statute would permit a suit by a person claiming he was injured while incarcerated in a state prison.



ers, nor did it disturb the formulation of the standard of care. Rather, it held that under the particular circumstances Bowers had no duty to make "specific arrangements" for constant surveillance, and, implicitly, that the precautions he did take were reasonable and satisfied the standard of care.

That ruling was correct. Deputy Bowers, as the federal officer with physical custody of Logue, exercised due care in returning Logue to the county jail if he had a reasonable basis for believing that adequate preparations had been made for Logue's safe-keeping and protection—that is, preparations which would ensure that the prisoner could not harm himself.<sup>12</sup> The district court believed that "constant sur-

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<sup>12</sup> Petitioners do not here renew the argument, properly rejected by the district court, that Deputy Bowers was negligent in removing Logue from the hospital against Dr. Gwin's advice. As we have indicated, Logue was *not* removed against his physician's advice. Dr. Gwin recommended transferring Logue to another medical facility, but stated that he would release him for return to the jail in the meantime if a safe place could be prepared (A. 343, 359, 361). When assured by Bowers that the jail facilities would be safe, Dr. Gwin did release Logue (A. 336, 348-349). There would, in any event, have been no reason to keep him in the hospital, for he did not require continued medical treatment, and, if Deputy Jones' instructions had been followed, the jail would have adequately protected Logue against self-inflicted injury.

Moreover, as the district court held (A. 610), the decision to remove Logue from the hospital was the "performance [of] \* \* \* a discretionary function or duty on the part of \* \* \* an employee of the Government," for which the United States cannot be held liable "whether or not the discretion involved be abused" (28 U.S.C. 2680(a)). See *Dalehite v. United States*, 346 U.S. 15; cf. *Morton v. United States*, 228 F. 2d 431 (C.A. D.C.) (barring claim of prisoner that he was wrongfully transferred from jail to hospital).

veillance" was essential in the circumstances (A. 608), and we have no reason here to dispute that view. While Bowers did not personally arrange with the county jailer for constant surveillance of Logue, the record shows that his supervisor, Deputy Jones, did make precisely such arrangements.

In describing to Chief Jailer Lowrance the preparations that would have to be made for Logue's return to the jail, Jones emphasized that the cell would have to be "kept under surveillance" (A. 384), and he specifically suggested that one way to accomplish that objective would be to place jail trustees near Logue so that they "could watch him continually" (A. 402). Lowrance agreed that he would follow these suggestions (A. 407). Bowers was told of the arrangements that Lowrance had agreed to make, and his personal inspection of the cell and his conversations at the jail confirmed what he had been told. Since he, too, believed that Logue's safety required that he be kept under observation, he would not have turned Logue over to the jail if he had had any doubt that there would be such protective surveillance (A. 345-346, 352-353).

Deputy Bowers reasonably relied on what he had been told by his supervisor. Although he could probably have foreseen, at the time he transferred custody of his prisoner, that Logue would attempt suicide again, he could not reasonably foresee that the county jailers would fail to follow the explicit instructions of Deputy Jones, especially after his personal inspections of the cell and his conversations with the jailers

had confirmed his understanding that they had agreed to carry out those instructions.<sup>13</sup> Thus, any duty to Logue that was not met was a duty owed by the county jailers and not by Bowers.

It is not difficult, of course, with the benefit of hindsight, to speculate as to further precautions Bowers might have taken or questions he might have asked to obviate any confusion and perhaps prevent Logue's suicide. But the issue is not whether one can in retrospect conceive of ways to avoid the tragedy but whether, at that time and in the light of the circumstances as they then appeared, Deputy Bowers acted reasonably. We submit that he did, and that his failure to make "specific arrangements" for constant observation—that is, to do what he was reliably told had already been done by Jones and agreed to by Lowrance—was not a breach of his duty of care.<sup>14</sup>

<sup>13</sup> There is nothing in this record suggesting that Lowrance's assurances should have been discounted. Indeed, Jones testified that Lowrance was a veteran prison official who "had had as much or more experience than I ever had in this sort of situation" (A. 384).

<sup>14</sup> The judges dissenting below from the denial of rehearing *en banc* may not have been aware of all the facts in this case, for their conclusion rests upon the erroneous suppositions (1) that "the Marshal made [no] reasonably diligent effort to assure proper supervision of the prisoner," and (2) that he permitted Logue to be "confined under circumstances which [he] knew were inherently dangerous in the absence of special precautions" (A. 626). As we have shown, Deputy Bowers' efforts to assure proper supervision of Logue, when viewed in the light of the circumstances as they then appeared, were reasonably diligent, and he reasonably believed that special precautions had

To the extent the district court's conclusion implied that Bowers should have personally supervised the physical operations of the jail in order to ensure that someone would be watching Logue at all times, the court of appeals correctly held that, as a Deputy United States Marshal, Bowers had no "power or authority to control any of the internal functions of the Nueces County jail" (A. 622), and thus could not have violated any duty of safekeeping by failing to take actual control of those internal functions.<sup>15</sup>

## II. THE UNITED STATES IS NOT LIABLE UNDER THE FEDERAL TORT CLAIMS ACT FOR INJURY TO A FEDERAL PRISONER CAUSED BY THE NEGLIGENT ACTS OF EMPLOYEES OF A STATE PRISON IN WHICH HE IS CONFINED

The district court found that the employees of the Nueces County Jail were negligent in failing to provide adequate surveillance of Logue, knowing that he

been taken by the county jailers to make the jail completely safe for the prisoner.

Similarly, the dissenters' supposed analog of a tubercular prisoner (A. 625) is inapposite, because it cannot be said on this record that Deputy Bowers failed to determine "whether the conditions of confinement reasonably assured survival" (*ibid.*). On the contrary, he had reasonably concluded that adequate safeguards would be taken.

<sup>15</sup> Neither the district court, the dissenting judges below, nor petitioners suggest that Deputy Jones failed to meet any duty owed to Logue, and this record could not support such an assertion. Jones carefully detailed to Lowrance the precautions that he thought necessary to ensure Logue's safety, including some form of surveillance. He received Lowrance's assurance that those precautions would be taken, and he instructed Bowers personally to inspect the jail's facilities to be sure they were properly prepared.

was seriously suicidal (A. 609). It held that, even if the Deputy Marshals had in all respects satisfied their duty of care with respect to Logue and not committed any negligent acts or omissions, the United States was "bound" by the negligent acts of the jail's employees and was liable for Logue's resulting death (A. 610-611).

The court of appeals did not disturb the district court's finding of negligence. It correctly held, however, that the United States is not liable under the Federal Tort Claims Act for the negligence of the jail's employees, because they are not "employee[s] of the Government" within the meaning of the Act.

**A. THE STATE JAILERS WERE NOT "EMPLOYEES OF THE GOVERNMENT" BECAUSE THE UNITED STATES HAD NO RIGHT OF CONTROL OVER THE PHYSICAL CONDUCT OF THE JAILERS IN THE PERFORMANCE OF THEIR DUTIES**

The Act authorizes tort suits based on the negligent acts "of any employee of the Government while acting within the scope of his office or employment" (28 U.S.C. 1346(b)). "Employee of the government" is defined by 28 U.S.C. 2671 to include (1) "officers or employees of any federal agency," and (2) "persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation."<sup>16</sup>

Petitioners cannot prevail unless the Nueces County Jail is a "federal agency" within the meaning of

<sup>16</sup> The definition also includes "members of the military or naval forces of the United States," but that provision is not pertinent here.

Section 2671 or, if it is not, the jail's employees were nevertheless "acting on behalf of a federal agency [i.e., the Bureau of Prisons] in an official capacity \* \* \* in the service of the United States \* \* \*." Although these issues are analytically distinct, the United States is not liable under either theory for essentially the same reason: neither the United States Marshal nor the Bureau of Prisons has any right to control or supervise the physical conduct of the jail's employees in performing the duties of their employment. Such a right of control is a precondition of government liability under the Act.

1. *The jail is a "contractor" and not a "federal agency" within the meaning of the Act*

Under the Act, "federal agency" includes:

the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, *but does not include any contractor with the United States.* [28 U.S.C. 2671; emphasis added.]

If this provision is to be given its "plain natural meaning" (*Rayonier, Inc. v. United States*, 352 U.S. 315, 318), the Nueces County Jail cannot be a federal agency for purposes of tort liability, for it assumes custody of federal prisoners pursuant to contract with the Bureau of Prisons (A. 638-642). The Bureau is expressly authorized under 18 U.S.C. 4002, the

predecessor of which predated the Tort Claims Act, to contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of \* \* \* persons [held under authority of any enactment of Congress.]

The legislative policy underlying the "contractor" exclusion applies with equal force to a contract governing confinement in a local jail as to any other independent contractor. Although the legislative history of the Act sheds little light on the meaning of the term "contractor,"<sup>17</sup> its intendment is shown by the Act's principal purpose to make the United States liable on the same basis and to the same extent as private persons would be in similar circumstances. See, *e.g.*, *Richards v. United States*, 369 U.S. 1, 6; *Indian Towing Co. v. United States*, 350 U.S. 61, 68-69. Thus, it has always been understood that the exclusion was intended to embody the common-law principle in apply-

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<sup>17</sup> Almost thirty years elapsed between 1919, when the first bill to subject the United States to tort liability was introduced (H.R. 14737, 65th Cong., 3d Sess.), and the passage of the Act in 1946. During that time some 32 such bills were introduced in the Congress. The contractor's exclusion first appeared in proposed amendments to H.R. 5373, introduced in the first session of the 77th Congress. Its appearance was unremarked in hearings and reports accompanying that and subsequent bills. See, *e.g.*, Hearings on H.R. 5373 and H.R. 6463 before the House Committee on the Judiciary, 77th Cong., 2d Sess. (Jan. 29, 1942), in which some of the other amendments to H.R. 5373 were extensively discussed.

ing the rule of *respondeat superior*—that one who engages an independent contractor to perform work is not liable for the torts of the contractor or his servants.<sup>18</sup> See *United States v. Becker*, 378 F. 2d 319, 321 (C.A. 9); *Brucker v. United States*, 338 F. 2d 427, 428, n. 2 (C.A. 9).

The courts have accordingly held without exception that the United States cannot be held liable on the basis of the negligence of employees of independent contractors.<sup>19</sup> Unless there is a master-servant relationship between the United States and the tortfeasor, the government is not liable. *E.g.*, *Storer Broadcasting Co. v. United States*, 251 F. 2d 268 (C.A. 5), certiorari denied, 356 U.S. 951; *Sapp v. United States*, 227 F. 2d 280 (C.A. 5).

Whether such a relationship exists depends upon whether the principal controls or has the right to control the physical conduct of the contractor in perform-

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<sup>18</sup> Cf. *Laird v. Nelms*, 406 U.S. 797, 801: "Congress intended to permit liability essentially based on the intentionally wrongful or careless conduct of Government employees, for which the Government was to be made liable according to state law under the doctrine of *respondeat superior* \* \* \*."

<sup>19</sup> See, *e.g.*, *Craghead v. United States*, 423 F. 2d 664 (C.A. 10); *Gowdy v. United States*, 412 F. 2d 525, 534-535 (C.A. 6); *Eutsler v. United States*, 376 F. 2d 634 (C.A. 10); *Yates v. United States*, 365 F. 2d 663 (C.A. 4); *United States v. Page*, 350 F. 2d 28 (C.A. 10), certiorari denied, 382 U.S. 979; *Buchanan v. United States*, 305 F. 2d 738 (C.A. 8); *Kirk v. United States*, 270 F. 2d 110 (C.A. 9); *Strangi v. United States*, 211 F. 2d 305 (C.A. 5).



ing the work contracted for. This is the common-law rule<sup>20</sup> as well as the law of Texas,<sup>21</sup> and it is the rule

<sup>20</sup> See ALI, *Restatement (Second) Agency*, § 2 (1958):

(1) A master is a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.

(2) A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.

(3) An independent contractor is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. He may or may not be an agent. The factors which are taken into account in determining whether a master-servant relationship exists are set forth in ALI, *Restatement (Second) Agency*, § 220(2) (1958):

In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

(j) whether the principal is or is not in business.

<sup>21</sup> *Wallace v. Southern Cotton Oil Co.*, 91 Tex. 18, 40 S.W. 399; *Elder v. Aetna Casualty & Surety Co.*, 149 Tex. 620, 236

which has been applied in suits under the Federal Tort Claims Act.<sup>22</sup>

It reflects the sound policy that one should not be held liable for the acts of those whom he has no right to control or supervise.<sup>23</sup> Were it otherwise, one might be required to respond in damages for negligence that he was without the power to prevent.

That the United States, through the Bureau of Prisons or the United States Marshal, neither has nor exercises any such right of control over the Nueces County jailers is shown by the statute authorizing the Bureau to contract with local jails, by the terms of the contract between the parties here, and by the practices under that contract.

In the same Act in which the Bureau of Prisons was established with the duty of providing for the care and safekeeping of federal prisoners, Congress, recognizing the lack of federal facilities for the local confinement of persons awaiting trial or held as wit-

S.W. 2d 611; *Great Western Drilling Co. v. Simmons*, 157 Tex. 268, 302 S.W. 2d 400; *Newspapers, Inc. v. Love*, 380 S.W. 2d 582 (Tex.).

<sup>22</sup> *United States v. Becker*, 378 F. 2d 319, 321-323 (C.A. 9); *Buchanan v. United States*, 305 F. 2d 738, 742-745 (C.A. 8) (Blackmun, J.); *Strangi v. United States*, 211 F. 2d 305, 307-308 and n. 10 (C.A. 5).

<sup>23</sup> Cf. ALI, *Restatement (Second) Agency*, § 219 (1958), comment a, p. 483:

"[A] servant is an agent standing in such close relation to the principal that it is just to make the latter respond for some of his physical acts resulting from the performance of the principal's business.

"The conception of the master's liability to third persons appears to be an outgrowth of the idea that within the time of service, the master can exercise control over the physical activities of the servant. \* \* \*

nesses, expressly authorized the Bureau to enter into contracts with state and local authorities for that purpose (46 Stat. 325). Prior to the enactment of this legislation, arrangements for local housing of federal prisoners were not coordinated or properly supervised. The result, as described by the Attorney General in recommending the legislation, was that "penal authorities of some of the States are faced with the same overcrowded conditions which exist in the Federal prisons," that "it is becoming impossible for them to accept Federal prisoners as boarders," and that "conditions in some of the local jails are so insanitary and generally deplorable that the Federal Government does not feel it ought to use them." H. Rep. No. 106, 71st Cong., 2d Sess., p. 2; S. Rep. No. 533, 71st Cong., 2d Sess., p. 2.

To remedy these conditions, the Act gave the Bureau of Prisons the authority to establish contractual relations with the local jails, fixing the rate to be paid on the basis of "the character of the quarters furnished, sanitary conditions, and quality of subsistence" (18 U.S.C. 4002). Where conditions were overcrowded or otherwise inadequate, or where local authorities were unable or unwilling to provide suitable facilities at a reasonable cost, the Attorney General was authorized to erect a federal house of detention. 18 U.S.C. 4003, 4009.

There was no expectation that the Bureau would control the physical conduct of jail employees in their treatment of federal prisoners, and no provision was made for such control in the statute. The Attorney General's recommendation noted that there were some

900 local jails across the country in which federal prisoners were then confined. H. Rep. No. 106, *supra*, p. 2; S. Rep. No. 533, *supra*, p. 2. His analysis of the proposed legislation, upon which the House and Senate Committees relied, suggested that the objective was to improve conditions in those jails by offering the incentive of higher contractual rates and by employing more frequent inspections to screen out those jails which do not meet the minimum standards of suitability.<sup>24</sup>

The contract between the Bureau and Nueces County (A. 638-642) is consistent with this limited

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<sup>24</sup> See H. Rep. No. 106, *supra*, p. 2:

"It is doubtful if the Federal Government ought ever to have a complete system of jails paralleling similar institutions now found in the political subdivisions of the various States. It is possible, however, for the central Government to improve conditions by certain administrative revisions of its present practices. More frequent inspections of local jails will also be of tremendous help."

We are informed by the Bureau of Prisons that there are now about 800 "contract jails" in the various states, housing on any given day some 4,000 federal prisoners. Each jail is inspected by a qualified Bureau employee at least once a year, and the more heavily populated prisons are checked more frequently. The Bureau's "Report of Inspection" form, which indicates the thoroughness of the inspections, is reproduced in Appendix B to this brief, *infra*, pp. 44-49. Although the Bureau does not maintain statistics on the number of contracts terminated because of unfavorable inspection reports, we are informed that there are several such terminations each year.

statutory objective.<sup>25</sup> It requires the county to provide for the "[s]afekeeping, care, and subsistence of persons held under authority of any United States statute" in accordance with the Bureau of Prisons' "rules and regulations governing the care and custody of persons committed" under the contract (A. 638). The agreement does not give the United States or its officers any right to supervise the physical conduct of the jail's employees. Rather, it reserves to the United States only "the right to enter the institution \* \* \* at reasonable hours for the purpose of inspecting the same and determining the conditions under which federal offenders are housed" (A. 638).

The "rules and regulations" incorporated into the contract and appended to it commit to the jail's administrator "the responsibility \* \* \* to keep the

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<sup>25</sup> Petitioners argue (Br. 24-25) that the contract was illegal as applied to the detention of Logue, because, under Texas law (Tex. Rev. Civ. Stat., Art. 5115), a person "suspected of insanity, or \* \* \* legally adjudged insane," may not be incarcerated in a jail. The contract between the Bureau and the county, however, is specifically authorized under federal law (18 U.S.C. 4002), and the applicable Texas statute directs jailers to receive and safely keep any prisoners tendered to them by a federal marshal (Tex. Rev. Civ. Stat., Art. 5117). On petitioners' reading of Article 5115, any prisoner awaiting transfer to a federal medical institution for a competency determination could not be housed, even temporarily, in a county jail. We think that Article 5115, read in the light of Article 5117, applies only to state prisoners. In any event, however, the confinement of Logue pending his transfer to a federal institution could not make the contract itself illegal and was not the proximate cause of Logue's death. It was the failure of the jailers to follow Deputy Jones' instructions, not the mere fact of confinement, that proximately caused the death.

prisoners in safe custody and to maintain proper discipline and control" (A. 639). While they specify the general standard of treatment for federal prisoners,<sup>26</sup> including the permissible methods of discipline,<sup>27</sup> and specify rules for communicating with attorneys, visitation privileges, mail, medical services, and employment, these provisions do not contemplate day-to-day federal supervision of the jail's handling of federal prisoners.

The contract is, in this respect, similar to a construction contract which, for example, establishes a general standard of workmanlike performance, gives in detail the specifications of the building to be constructed, and lists safety regulations to be observed. In neither case does the principal assert a right actually to supervise the physical process by which the contractor's employees perform the duties specified in the contract. That is the exclusive responsibility of the contractor. In these circumstances, under the general common law and the law of Texas, the principal is not liable for the torts of the contractor's employees (see pp. 22-23, nn. 20, 21, *supra*).

The practice under the contract with Nueces County accords with its terms and conditions. The record shows that, in special circumstances or under emer-

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<sup>26</sup> For example, prisoners must be held in "clean quarters adequately heated and ventilated," they must receive "adequate and wholesome food, and proper medical services," and they must "not be allowed special privileges or improper liberties" (A. 639).

<sup>27</sup> These are restriction of privileges, restricted diet (if approved by a physician), limited solitary confinement, and forfeiture of good conduct time.

gency conditions, the chief jailer would consult with the deputy marshal on matters relating to the treatment of federal prisoners (A. 437), and that the jailer would generally accommodate the special requests and suggestions made by the marshal (A. 406, 438). But this hardly suggests, as petitioners contend (Br. 19-23), that the marshal has control of the physical conduct of the jail's employees. It merely reflects the kind of informal cooperation that might be expected between a principal and his independent contractor, without altering the nature of their legal relationship.

Indeed, the contract itself contemplates such consultation with the marshal in special cases. Where the prison officials believe that a prisoner cannot be restrained by "reasonable methods," the contract obliges them to report the matter to the marshal, who will give appropriate instructions (A. 639). Similarly, the marshal must be consulted with respect to visitation rights when the United States Attorney considers them to be a danger to the public interest, with respect to mail in which a prison official finds contraband, and with respect to hospitalization in other than an emergency situation (A. 640). These requirements do not, however, give the marshal any right to control or supervise the day-to-day routine operations of the jail in its handling of federal prisoners.

Likewise, although Deputy Jones gave detailed instructions to the Nueces County jailer on the precautions that should be taken before Logue was returned,

and although Deputy Bowers twice inspected the cell to see that it had been properly prepared, neither Jones nor Bowers thereby undertook to control the jail's detailed handling of Logue. They were, rather, merely satisfying their duty to ensure that the jail's facilities were adequate for the safekeeping of a suicidal prisoner and that the jailers were fully apprised of the special arrangements that should be made to prevent Logue from harming himself.

This Court long ago recognized that a federal marshal is not responsible for the negligent acts of a state jailer who has custody of a federal prisoner. In *Randolph v. Donaldson*, 13 Cranch 76, an action of debt was brought against a marshal for negligently permitting a judgment-debtor to escape from the state jail in which he had been confined. The question presented was "whether an escape of a judgment-debtor, after regular commitment, under process of the United States courts, to a state jail, be an escape for which the marshal of the United States for the district is responsible" (13 Cranch at 84). The argument was made that the marshal should be held liable because he was charged by law with the custody of the prisoner and should not be relieved of that duty by transferring the prisoner to a state jail. The Court held, however, in words equally applicable here, that the marshal cannot be responsible for the negligence of those whom he does not control (*id.* at 85-86):

The act of congress has limited the responsibility of the marshal to his own acts, and the acts of his deputies. The keeper of a state jail is neither in fact, nor in law, the deputy of the



marshal. He is not appointed by, nor removable at the will of the marshal. When a prisoner is regularly committed to a state jail, by the marshal, he is no longer in the custody of the marshal, nor controllable by him. The marshal has no authority to command or direct the keeper, in respect to the nature of the imprisonment. The keeper becomes responsible for his own acts, and may expose himself by misconduct to the "pains and penalties" of the law. For certain purposes, and to certain intents, the state jail, lawfully used by the United States, may be deemed to be the jail of the United States, and that keeper to be keeper of the United States. But this would no more make the marshal liable for his acts, than for the acts of any other officer of the United States, whose appointment is altogether independent. And in these respects, there is a manifest difference between the case of a marshal and a sheriff. The sheriff is, in law, the keeper of the county jail, and the jailer is his deputy, appointed and removable at his pleasure. He has the supervision and control of all the prisoners within the jail; and therefore, is justly made responsible by law for all escapes occasioned by the negligence or wilful misconduct of his underkeeper.

Except for the district court in this case, the courts that have considered the issue have consistently held that state jails holding federal prisoners pursuant to contract with the Bureau of Prisons are independent contractors for whose negligence the United States is not liable under the Federal Tort Claims Act. *Rogers v. United States*, 302 F. Supp. 699, 708-709 (D. S.C.), affirmed *per curiam*, 426 F. 2d 311 (C.A. 4); *Brown v. United States*, 342 F. Supp. 987, 998 (E.D. Ark.); *Blair v. Anderson*, D. Del., Civil Action No. 4098, de-

cided December 19, 1972; *Hughes v. United States*, S.D. Cal., Civil No. 70-158-F, decided July 20, 1972; *Williams v. United States*, S.D. Cal., Civil No. 3241-SD-S, decided March 30, 1971 (unreported). As the court in *Williams* stated (slip op. 7) :

Congress must have known that United States Marshals in the states are not in a position to provide day to day supervision of the hundreds of local jails in which federal prisoners are kept. I think Congress must have known that when federal prisoners were placed in state jails the employees of local and state governments would actually be responsible for the protection of the prisoners and that that was the inevitable effect of a contract for the housing and safekeeping of the prisoners.

2. *The jail's employees were not "acting on behalf of a federal agency in an official capacity"*

If, as we have shown, the Nueces County Jail is an independent contractor and therefore not a "federal agency" under the Act, there remains the question whether its employees nevertheless were employees of the government because, with respect to federal prisoners, they were "acting on behalf of a federal agency," i.e., the Bureau of Prisons, "in an official capacity." The argument, as framed by the dissenting judges on the denial of rehearing *en banc* (A. 628) is that, since the county jails "perform all functions incidental to the confinement of Federal prisoners that would otherwise be performed by the United States Marshal, \* \* \* the Nueces County Sheriff and his deputies become surrogate Marshals for purposes of Federal tort liability."

The statutory language upon which this argument rests, however, is not meant to cover "surrogates" who are performing duties that might be performed by federal employees.<sup>28</sup> The purpose was to cover those persons who act under the actual supervision of a federal agency but whose relationship to the government is other than that of an employee in the usual sense of that term. Thus, the Act would cover the tortious conduct of a "dollar-a-year" man who is in service of the government without pay,<sup>29</sup> or an employee of a state or a private company who is placed under direct supervision of a federal agency pursuant to contract or special arrangement,<sup>30</sup> or perhaps persons appointed to serve without pay on a federal commission or board.<sup>31</sup>

The statute does not, however, in this respect depart from the central principle of *respondeat superior*. The critical question here, as in the case of the "contractor" exclusion, is whether the United States has the right to control the physical conduct of the person

<sup>28</sup> The provision applies to "persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation" (28 U.S.C. 2671).

<sup>29</sup> See 1 Jayson, *Handling Federal Tort Claims*, § 203.04 (1970); Gottlieb, *The Federal Tort Claims Act—A Statutory Interpretation*, 35 Georgetown L.J. 1, 11, n. 36 (1946).

<sup>30</sup> See 5 U.S.C. 3374(c)(2), which provides that a state employee assigned to a federal agency pursuant to statute (5 U.S.C. 2271-3376) is deemed an employee of the agency for various purposes, including federal tort liability. See, also, *Martarano v. United States*, 231 F. Supp. 805 (D. Nev.) (state employee placed under supervision of federal government pursuant to a cooperative agreement for controlling predatory animals and rodents).

<sup>31</sup> See 1 Jayson, *supra*, note 29.

in performing his duties. Thus, for example, it has been held that federally-licensed inspectors who are hired, fired, paid, and supervised by a state are not "acting on behalf of a federal agency" because no federal agency has a right to control their activities.<sup>32</sup>

In the recent case of *Blair v. Anderson*, D. Del., Civil Action No. 4098, decided December 19, 1972, involving the status of a state jail's employees for purposes of federal tort liability, the court correctly stated that "[o]ne of the prerequisites for inclusion within the class of 'employees of the government' \* \* \* is a right of control by the United States with respect to the physical conduct of the alleged employee in the performance of the services involved" (slip op. 7). Though the court doubted that the claimant could demonstrate such control over the operations of a contract jail, it offered him an opportunity to submit evidence on the point.

As we have already demonstrated, the record here affirmatively shows that the United States has no such right of control over the Nueces County jailers. Like other state employees, presumably they are hired, fired, trained, disciplined, and supervised exclusively by state officials, and they are not required to follow the orders of any federal officer, even with respect to the care and treatment of federal prisoners.

The decisions relied upon by petitioners (Br. 15-17) do not suggest a contrary result here. They hold only

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<sup>32</sup> *Haynes v. United States*, 327 F. Supp. 264 (W.D. N.Y.), affirmed on opinion below, 443 F. 2d 375 (C.A. 2). See, also, *Laritt v. United States*, 177 F. 2d 627 (C.A. 2); *Shippcy v. United States*, 321 F. Supp. 350 (S.D. Fla.).

that, where there is a right of control, the tortfeasor may be a person "acting on behalf of a federal agency."

In *Close v. United States*, 397 F. 2d 686 (C.A. D.C.), the court held that employees of the District of Columbia Jail could be "persons acting on behalf of a federal agency," and it accordingly reversed the district court's dismissal of the complaint. It specifically noted that, on the record before it, there was no reason to assume that the Attorney General was without power "to supervise the D.C. jailer in his handling of this particular prisoner" (397 F. 2d at 687).<sup>33</sup>

As in *Close*, the decision in *Witt v. United States*, 462 F. 2d 1261 (C.A. 2), turned on the existence of a right of control. A military prisoner injured while on a work detail at the stables of the Fort Leavenworth Hunt Club was permitted to recover based on the negligent acts of a civilian employee of the Hunt Club who had been supervising the work detail. The court noted that the Hunt Club employee had been authorized by the Commandant of the Disciplinary Barracks to supervise the work detail and "was certainly amenable to some degree of control by the Disciplinary Barracks" (462 F. 2d at 1264). He was, therefore, "acting on behalf of" the Barracks.

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<sup>33</sup> On remand of that case, the government introduced evidence showing that the Bureau of Prisons does not exercise control over the D.C. Jail's employees, but the district court held the government liable (Civil Action No. 3039-66, decided July 6, 1971). The case is presently pending on appeal (C.A.D.C., No. 72-1657). The government's argument is that the record does not support the district court's finding of control.

*3. Congress did not intend to subject the United States to liability under the Tort Claims Act for the negligence of employees of state jails*

To impose liability upon the United States for the negligence of state jailers would result in a potentially large financial burden which the government could not avoid by its own conduct. The Bureau of Prisons has no authority to place its employees in the hundreds of contract jails for the purpose of supervising state employees in the performance of their duties, and there is no reason to think that the state prison officials would permit such direct federal supervision. Yet, unless the United States could exercise control over the physical operations of these jails with respect to their handling of federal prisoners, it would be unable to prevent or to guard against the very conduct that may lead to its liability. It would, in other words, be disabled from satisfying the duty it is deemed to owe to federal prisoners.

Even if there were legal authority to place a federal employee in each of the 800 state prisons housing federal prisoners, the Bureau of Prisons informs us that, taking into account vacations, holidays, and sick leave, round-the-clock manning would require five employees per prison. Even then, a single person without authority to hire, fire, discipline, or train the state jailers could in reality serve only as an observer and could not effectively control the physical handling of prisoners.

Congress could not have intended to impose that burden upon the federal government. The Bureau of

Prisons' authority to contract with local jails for the temporary confinement of federal prisoners was established 16 years before the Federal Tort Claims Act was passed, and the practice of using such jails for that purpose was encouraged and authorized from the beginning of the federal system.<sup>34</sup> Congress must have known that the federal marshals could not actually supervise the handling of the federal prisoners in those jails. There is no reason to believe that it intended in the Tort Claims Act to permit suits by such prisoners based on the negligence of state employees, for that would depart from the basic principle of *respondet superior* upon which the Act is premised.

B. THE DUTY OF CARE OWED TO FEDERAL PRISONERS IS NOT "NON-DELEGABLE"

Petitioners argue that 18 U.S.C. 4042 "imposes an absolute, non-delegable duty" upon the Bureau of Prisons, which "cannot be avoided by the relinquishment of supervision over a federal prisoner" (Br. 17). They argue that "the duty of care and protection of federal prisoners is fixed on the United States and the United States should not be allowed to avoid that duty by simply substituting local jailers for United States Marshals pursuant to a contract" (Br. 18).

This argument is wrong for two reasons. In the first place, the statute imposing upon the Bureau of Prisons a duty of care towards federal prisoners

<sup>34</sup> See 1 Stat. 96, in which the Congress recommended by resolution that the states instruct their jail keepers to receive federal prisoners, and 1 Stat. 225, in which marshals were authorized to hire temporary jails.

was part of the same legislation in which the Bureau was given authority to enter into contracts for the housing of such prisoners in state jails (see pp. 24-26, *supra*). 18 U.S.C. 4002, 4042. As we showed above, Congress did not contemplate that the Bureau would exercise supervision in those state jails over the care of federal prisoners. Congress did not impose a non-delegable duty on the Bureau; rather, it specifically authorized the delegation of its duty in precisely the circumstances presented here.

In the second place, petitioners' contention is, in effect, that the United States should, in the case of injuries to federal prisoners caused by the negligence of state employees, be held liable absolutely and without regard to fault. That is, even though no employee of the United States has failed to meet any duty owed to the prisoner or committed any act of negligence, the government must respond in damages because the prisoner was injured by the tortious conduct of a nonemployee. The Act, however, permits recovery against the United States only for "personal injury or death caused by the negligent or wrongful act or omission of any *employee of the Government*" (28 U.S.C. 1346(b); emphasis added). There is no basis for liability except a federal employee's tortious conduct.

This Court only last Term held that the Act does not provide for liability without fault in circumstances where state law would impose such liability



on private persons. *Laird v. Nelms*, 406 U.S. 797. The contention there was that damage from a sonic boom caused by military planes created liability even though no government employee was negligent, because state law would impose absolute liability for injury resulting from ultrahazardous activity. The Court, reaffirming *Dalehite v. United States*, 346 U.S. 15, stated that "the Federal Tort Claims Act \* \* \* precludes the imposition of liability if there has been no negligence or other form of 'misfeasance or nonfeasance' \* \* \* on the part of the Government" (406 U.S. at 799). The Act does "not authorize the imposition of strict liability of any sort upon the Government" (*id.* at 803).

We submit that the result must be the same here. The few courts that have considered the question have correctly held that the United States is not liable to an injured federal prisoner for the torts of state jailers on a theory of nondelegable duty. *Brown v. United States*, 342 F. Supp. 987, 998 (E.D. Ark.); *Blair v. Anderson*, D. Del., Civil Action No. 4098, decided December 19, 1972, slip op. 8-10; see *Williams v. United States*, S.D. Cal., Civil No. 3241-SD-S, decided March 30, 1971 (unreported), slip op. 7-8. Any other result would make the United States an insurer of the safety of prisoners in state jails, which is not provided for in the Federal Tort Claims Act, or any other Act of Congress.

**CONCLUSION**

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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APRIL 1973.

## APPENDIX A

### 1. 28 U.S.C. 1346(b) provides:

Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

### 2. 28 U.S.C. 2671 provides:

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

“Acting within the scope of his office or employment”, in the case of a member of the military or naval forces of the United States, means acting in line of duty.

3. 28 U.S.C. 2674 provides in part:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

\* \* \* \*

4. 18 U.S.C. 4042 provides:

The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State and local government in the improvement of their correctional systems.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

5. 18 U.S.C. 4002 provides in part:

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

\* \* \* \* \*

The rate to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

6. 18 U.S.C. 4086 provides:

United States marshals shall provide for the safekeeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

# APPENDIX B

## UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF PRISONS

BP-CB-46  
(Rev. 3-71)  
FD-302 (Rev. 11-17-60)

### REPORT OF INSPECTION

Facility No. \_\_\_\_\_  
Use Code \_\_\_\_\_

Telephone \_\_\_\_\_

1. Name of institution \_\_\_\_\_
2. State \_\_\_\_\_
3. District \_\_\_\_\_
4. City \_\_\_\_\_
5. County \_\_\_\_\_
6. Zip \_\_\_\_\_
7. Street and No. \_\_\_\_\_
8. Distance to center of town \_\_\_\_\_
9. Official in charge \_\_\_\_\_
10. Title \_\_\_\_\_
11. Term expires \_\_\_\_\_
12. How far to U. S. court? \_\_\_\_\_
13. Where located? \_\_\_\_\_
14. How far to U. S. magistrate? \_\_\_\_\_
15. Where located? \_\_\_\_\_
16. When was institution built? \_\_\_\_\_
17. When renovated? \_\_\_\_\_
18. Normal capacity: Male: Adult \_\_\_\_\_ Juv. \_\_\_\_\_ Female: Adult \_\_\_\_\_ Juv. \_\_\_\_\_ Total \_\_\_\_\_

#### 19. Population on day of inspection:

Total	Federal				Nonfederal			
	Adults		Juv.		Adults		Juv.	
Awaiting trial or hearing	M	F	M	F	M	F	M	F
Under jail sentence								
Under sentence awaiting transfer								
Immigration detainees								
Others								
Totals								

Federal

All Classes

20. Highest count on any day during past 12 months \_\_\_\_\_
- Lowest count on any day during past 12 months \_\_\_\_\_
- Average daily population during past 12 months \_\_\_\_\_

#### 21. Check adjective rating for each factor:

	Good	Satisfactory	Poor
Administration			
Security and Discipline			
Building and Equipment			
Food Program			
Sanitation and Personal Hygiene			
Medical Services			
Inmate Programs			

22. Over-all adjective rating \_\_\_\_\_
23. Present authorized use of this institution (use symbols) \_\_\_\_\_  
Recommended change, if any \_\_\_\_\_
24. Do you recommend this institution for prisoners presenting security hazards? \_\_\_\_\_
25. To what extent is this institution needed for federal use? \_\_\_\_\_
26. Is an alternate institution available for federal use? \_\_\_\_\_  
Location \_\_\_\_\_ Distance \_\_\_\_\_
27. What juvenile detention facilities are available in the community? \_\_\_\_\_
28. Time spent on this inspection: In institution \_\_\_\_\_ Outside institution \_\_\_\_\_

Date of inspection \_\_\_\_\_

Signature of inspector \_\_\_\_\_

Name of institution \_\_\_\_\_

**JAIL PROFILE DATA**

29. Total number of employees \_\_\_\_\_ 30. Additional number needed \_\_\_\_\_  
 31. In what positions? \_\_\_\_\_  
 32. How many employees now employed have taken or are taking the following:  
     Jail correspondence course \_\_\_\_\_ Jail training classes \_\_\_\_\_ Academic classes \_\_\_\_\_  
 33. Do you recommend management assistance? \_\_\_\_\_ Has it been requested? \_\_\_\_\_  
     If so, what? \_\_\_\_\_ Estimate of cost \_\_\_\_\_

**Inmate Programs**

34. Indicate by a checkmark which of the following programs are in effect or planned, then describe in narrative:

Programs	Active	Planned	Programs	Active	Planned
Counseling			Employment placement		
Classification			In-house employment		
Diagnostic study			Religious activities		
Crisis intervention			Physical education		
Work release			Leisure time activities		
Study release			Narcotics Anonymous		
General education			Alcoholics Anonymous		
Remedial education			Other		
Vocational training					

**NARRATIVE**

Give a narrative description of conditions in the institution, including any interesting or unusual features or incidents and any data concerning its administration not covered elsewhere in the report. A statement must be given for all areas listed in question 21. Include also a statement describing the facilities for women and juveniles and the method of handling these inmates.

At the beginning of the narrative give a brief summary covering the following points: (1) whether institution is authorized for federal use and to what extent and whether it is needed for federal offenders; (2) whether it is secure—describe security facilities, type of supervision, method of handling keys; (3) whether any irregularities or abuses were disclosed; (4) whether the food is adequate.

For the last section of the narrative, under the heading "General", list separately: outstanding problems; recommendations; and Bureau services desired.

Attach a copy of your letter (if any) to institution officials or others confirming your suggestions for improvement.

**Summary**

(Additional pages of narrative should be numbered 2a, 2b, etc.)

Name of institution \_\_\_\_\_

35. Indicate method of selecting personnel: Merit system \_\_\_\_\_ Other (describe) \_\_\_\_\_

36. Entrance salary for jailers \_\_\_\_\_ 37. Hours per week employees work \_\_\_\_\_

38. Number of Matrons \_\_\_\_\_ 39. Are there written rules for employees? \_\_\_\_\_

40. Is there any form of in-service training program? \_\_\_\_\_

41. Do officials know the regulations concerning handling of federal offenders? \_\_\_\_\_

42. Is there any evidence of disregard for the legal rights of prisoners? \_\_\_\_\_

43. Check records maintained: Arrest record \_\_\_\_\_ Personal history \_\_\_\_\_ Visits \_\_\_\_\_

Medical \_\_\_\_\_ Disciplinary \_\_\_\_\_ Cash and property \_\_\_\_\_ Commitment and discharge \_\_\_\_\_

Other (specify) \_\_\_\_\_

44. Do records supply reasonably adequate information? \_\_\_\_\_

45. What prisoners are fingerprinted? \_\_\_\_\_

46. Photographed? \_\_\_\_\_

47. Is a receipt given prisoners for their cash and property? \_\_\_\_\_

48. Are prisoners permitted to retain any cash in their possession? \_\_\_\_\_

49. Is there an inmate commissary? \_\_\_\_\_ What is done with the profits? \_\_\_\_\_

50. If there is no commissary, what method is used for procuring commissary items? \_\_\_\_\_

51. Is feeding of prisoners on a fee basis? \_\_\_\_\_ Daily rate \_\_\_\_\_

52. Who is in charge of procurement of supplies? \_\_\_\_\_

## SECURITY AND DISCIPLINE

53. Is the institution reasonably secure? \_\_\_\_\_

54. Are adequate inspections made of security facilities? \_\_\_\_\_

55. Are firearms and other weapons stored safely? \_\_\_\_\_ Where? \_\_\_\_\_

56. Are there regulations prohibiting carrying firearms into the jail? \_\_\_\_\_

57. Are keys properly stored and accounted for? \_\_\_\_\_

58. Are keys ever in the possession of any prisoner? \_\_\_\_\_

59. Check type of communication between prisoners' quarters and front office: \_\_\_\_\_

Intercom \_\_\_\_\_ Sound monitor \_\_\_\_\_ Telephone \_\_\_\_\_ Public address system \_\_\_\_\_ Other \_\_\_\_\_

60. Is there a communications tie-in with any outside agency? \_\_\_\_\_

61. How often do jailers visit prisoners' quarters: Day \_\_\_\_\_ Night \_\_\_\_\_

62. Is a record or check made of night supervision? \_\_\_\_\_

63. How frequently are thorough shakedown made? \_\_\_\_\_

64. How often are prisoners counted? \_\_\_\_\_ 65. Describe the system \_\_\_\_\_

66. Describe admission procedures \_\_\_\_\_

67. Describe release procedures \_\_\_\_\_

68. List any weaknesses noted in custodial control \_\_\_\_\_

69. Have advance plans been developed to meet emergencies in the event of disturbances, escapes, fires, etc.? \_\_\_\_\_

70. Describe visiting facilities \_\_\_\_\_

71. Are visits supervised? \_\_\_\_\_

72. When are visits permitted? \_\_\_\_\_

73. Are prisoners permitted to have visits from relatives? \_\_\_\_\_ Friends? \_\_\_\_\_

Attorneys? \_\_\_\_\_ Clergymen? \_\_\_\_\_



Name of institution \_\_\_\_\_

**SECURITY AND DISCIPLINE (CONTINUED)**

74. What type of articles may prisoners receive? \_\_\_\_\_
75. Are prisoners' mail and packages inspected? \_\_\_\_\_
76. Is written authority secured for inspection of mail? \_\_\_\_\_
77. What instructions are given new prisoners: Verbal \_\_\_\_\_ Written \_\_\_\_\_ None \_\_\_\_\_
78. Does it appear that effective and constant supervision is maintained? \_\_\_\_\_
79. Are prisoners' complaints given prompt consideration? \_\_\_\_\_
80. Do officials delegate any authority to prisoners? \_\_\_\_\_
81. Who selects trustees? \_\_\_\_\_ 82. What is the average number used? \_\_\_\_\_
83. Are full supervision and control maintained over them? \_\_\_\_\_
84. Who establishes disciplinary policies and procedures? \_\_\_\_\_
85. What types of punishment are used? \_\_\_\_\_
86. Describe solitary confinement facilities \_\_\_\_\_
87. What limit is placed on the duration of solitary confinement? \_\_\_\_\_  
Are adequate provisions made for maintenance of personal hygiene? \_\_\_\_\_  
How often are prisoners visited by officials? \_\_\_\_\_
88. Are dietary restrictions imposed as punishment? (If so, describe) \_\_\_\_\_

**BUILDING AND EQUIPMENT**

89. Describe the type of construction and material of the building, including floors, walls, windows, stairways, etc. \_\_\_\_\_
90. Is the building adequate in size for present needs? \_\_\_\_\_
91. Is building and equipment kept in satisfactory state of repair? \_\_\_\_\_
92. What changes, improvements, or remodeling are contemplated? \_\_\_\_\_
93. Are plumbing fixtures modern? \_\_\_\_\_ In good repair? \_\_\_\_\_ Adequate in number? \_\_\_\_\_
94. Were the following security features found adequate: Safety vestibules \_\_\_\_\_  
Protective screens on windows \_\_\_\_\_ Locking devices \_\_\_\_\_ Food windows \_\_\_\_\_  
Visiting facilities \_\_\_\_\_ Guard corridors \_\_\_\_\_ Observation windows \_\_\_\_\_
95. Were the following safety features found adequate: Emergency exits \_\_\_\_\_ Fire apparatus \_\_\_\_\_  
Stairways \_\_\_\_\_ Elevators \_\_\_\_\_ Cell locking devices \_\_\_\_\_
96. Describe any fire or safety hazards observed \_\_\_\_\_
97. Type of beds \_\_\_\_\_
98. Other furniture in cells and dayrooms \_\_\_\_\_
99. Is space available for additional beds in the event of overcrowding? \_\_\_\_\_ How many? \_\_\_\_\_
100. Does the institution have its own laundry? \_\_\_\_\_ Sterilizer? \_\_\_\_\_
101. Are there any special facilities: Receiving and discharge room \_\_\_\_\_ Dining room \_\_\_\_\_  
Recreation room \_\_\_\_\_ Classrooms \_\_\_\_\_ Consultation room \_\_\_\_\_ Visiting room \_\_\_\_\_  
Chapel \_\_\_\_\_ Other \_\_\_\_\_

NOTE: For the first description of a new or remodeled institution an itemized description of facilities must be submitted on Form BP-C53a.

Name of institution \_\_\_\_\_

**FOOD PROGRAM**

102. Is there a kitchen in the institution? \_\_\_\_\_ If not, where are the meals prepared? \_\_\_\_\_

103. Are kitchen and equipment adequate? \_\_\_\_\_

104. Is there a good cook? \_\_\_\_\_

105. Who manages the kitchen? \_\_\_\_\_

106. Who plans the menus? \_\_\_\_\_

107. Do inmates assist in the preparation of food? \_\_\_\_\_ Are they supervised? \_\_\_\_\_

108. Are adequate standards of sanitation maintained? \_\_\_\_\_

109. Describe eating utensils \_\_\_\_\_

Where and how washed? \_\_\_\_\_

110. Are they in good condition? \_\_\_\_\_

111. Hours when meals are served: Breakfast \_\_\_\_\_

Dinner \_\_\_\_\_

Supper \_\_\_\_\_

112. Give menu served on day of inspection: (Attach weekly menu if available) \_\_\_\_\_

Breakfast

Dinner

Supper

113. Do employees supervise the serving of meals? \_\_\_\_\_

114. Where are meals served? \_\_\_\_\_

115. Describe method of serving \_\_\_\_\_

116. Describe adequacy, variety, and nutritional balance of diet \_\_\_\_\_

**SANITATION AND PERSONAL HYGIENE**

117. Does the institution have a systematic cleaning program? \_\_\_\_\_

118. Is the work assigned and supervised by employees? \_\_\_\_\_

119. Are adequate cleaning tools and supplies provided? \_\_\_\_\_

120. Was there any evidence of vermin? \_\_\_\_\_

121. What methods are used for eradication? \_\_\_\_\_

122. Type of bedding issued \_\_\_\_\_

124. Blankets? \_\_\_\_\_

123. How often are linens laundered? \_\_\_\_\_

125. Are new inmates issued clean bedding? \_\_\_\_\_

126. Is there an accumulation of food and other unnecessary articles in cells? \_\_\_\_\_

127. Is adequate hot water available? \_\_\_\_\_

128. Do prisoners have access to drinking water at all times? \_\_\_\_\_

129. Is heating system adequate for all sections of the institution? \_\_\_\_\_

130. What is method of ventilation? \_\_\_\_\_

131. Who controls heating and ventilation? \_\_\_\_\_

132. Is lighting, natural or artificial, inadequate in any section? \_\_\_\_\_

133. Is the paint in good condition? \_\_\_\_\_

134. Are institution uniforms furnished? \_\_\_\_\_

135. Do all inmates have access to bathing facilities? \_\_\_\_\_

136. Is soap furnished in sufficient quantity? \_\_\_\_\_ Towels? \_\_\_\_\_

137. How is barber service provided? \_\_\_\_\_

138. What provision is made for prisoners to obtain toilet articles? \_\_\_\_\_

139. Name of physician for nonfederal prisoners \_\_\_\_\_
140. Basis of payment for services \_\_\_\_\_
141. How often does he visit jail? \_\_\_\_\_
142. Name of physician for federal prisoners \_\_\_\_\_
143. How often does he visit jail? \_\_\_\_\_
144. Are there medical personnel other than the doctor? \_\_\_\_\_
145. Are all new prisoners given a medical examination? \_\_\_\_\_
146. What hospital facilities are available: In the institution \_\_\_\_\_  
In the community \_\_\_\_\_
147. Describe sick call procedure \_\_\_\_\_
148. Is prompt attention given to prisoners' complaints of illness? \_\_\_\_\_
149. What medical supplies are kept at the institution? \_\_\_\_\_
150. How are they controlled and administered? \_\_\_\_\_
151. Does the institution have special facilities for handling: Insane? \_\_\_\_\_ Narcotic addicts? \_\_\_\_\_  
Chronic alcoholics? \_\_\_\_\_ (If any such special facilities exist, describe in narrative) \_\_\_\_\_
152. What provision is made for dental work? \_\_\_\_\_

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

## Syllabus

### LOGUE ET AL. v. UNITED STATES

#### CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 72-656. Argued April 24, 1973—Decided June 11, 1973

Petitioners, claiming that their son's suicide while he was confined as a federal prisoner in a county jail was proximately caused by the negligence of Government agents and employees, brought suit under the Federal Tort Claims Act, which establishes Government liability for negligent acts or omissions of an "employee of the Government," defined, *inter alia*, as a person officially "acting on behalf of a federal agency . . . with or without compensation." The Act excludes any contractor with the United States from the definition of federal agency. Though finding that the county had contracted with the Federal Government to house federal prisoners in its jail, the District Court held that the Government was liable on the grounds that the sheriff's employees negligently failed to maintain adequate surveillance of the decedent (who had attempted suicide while initially incarcerated) and that the Deputy United States Marshal negligently failed specifically to arrange for constant surveillance. The Court of Appeals reversed on the grounds that under the "contractor" exclusion the United States was not accountable for the negligence of the sheriff's employees and those employees were not acting on behalf of a federal agency in an official capacity within the meaning of the Act. *Held*:

1. The Court of Appeals correctly concluded that, contrary to petitioners' contention, the deputy marshal had no authority to control the activities of the sheriff's employees and that the jail was a "contractor," not a "Federal agency," within the meaning of the Act; and the statutory authorization for the housing of federal prisoners in state facilities clearly contemplated that the day-to-day operation of the contractor's facilities was to be in the contractor's, not the Government's, hands. Pp. 5-9.

2. Petitioners' alternative contention that even though the sheriff's employees might not be "employees" of a federal agency,

## Syllabus

they might nonetheless be "acting on behalf of a Federal agency in an official capacity" and thus "employee[s] of the Government" within the meaning of the Act is not consistent with the legislative purpose of the Act. Pp. 9-10.

3. The Court of Appeals, not having given consideration to the question of the deputy marshal's negligence apart from other issues, should address itself to that question on remand. Pp. 11-12..  
459 F. 2d 408 and 463 F. 2d 1340, vacated and remanded.

REHNQUIST, J., delivered the opinion for a unanimous Court.  
STEWART and MARSHALL, JJ., filed a separate statement.

NOTICE : This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

## SUPREME COURT OF THE UNITED STATES

No. 72-656

Orval C. Logue et al., Petitioners, v. United States.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
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[June 11, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Reagan Logue, a federal prisoner confined in a county jail pending trial, fashioned a noose from a bandage covering a laceration on his left arm and hanged himself. His mother and adoptive father sued the United States for damages under the Federal Tort Claims Act, 28 U. S. C. § 1346 (b) (1970),<sup>1</sup> claiming that negligence on the part of Government agents and employees proximately caused the death of their son. The District Court determined that Logue's death was the result of negligence for which the United States was liable, and awarded damages. *Logue v. United States*, 334 F. Supp.

<sup>1</sup> "Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346 (b) (1970).

322 (SD Tex. 1971). The Court of Appeals reversed this judgment. *Logue v. United States*, 459 F. 2d 408 (CA5 1972), rehearing *en banc* denied, 463 F. 2d 1340 (CA5 1972). We granted certiorari in order to consider the application to this case of the Act's exclusion of employees of a "contractor with the United States." 28 U. S. C. § 2671 (1970).

On May 22, 1968, Reagan Logue was arrested by Deputy United States Marshal Del Bowers on a bench warrant charging Logue with conspiracy to smuggle 229 pounds of marihuana into the United States. After a hearing he was taken to the Nueces County jail in Corpus Christi, Texas, to await trial. This jail is one of some 800 institutions operated by state and local governments that contract with the Federal Bureau of Prisons to provide for the safekeeping, care, and subsistence of federal prisoners.<sup>2</sup>

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<sup>2</sup> The Federal Bureau of Prisons has statutory authority to contract with state prisons for the housing of federal prisoners:

"For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

"Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

"The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons." 18 U. S. C. § 4002 (1970).

The contract with the Neuces County jail incorporates by reference the standard of care set forth in this statute.

On the day after his initial incarceration Logue attempted to commit suicide by slashing veins in his left arm. He was immediately taken to a hospital emergency room for treatment of the laceration. While the wound turned out to be relatively minor, Logue was admitted to the hospital's psychiatric floor because of the attending doctor's observation that he was actively hallucinating and out of touch with reality. The psychiatrist who later took charge of the case, recognizing Logue's suicidal tendencies, recommended to federal officials that he be committed to a medical facility for rehabilitation.<sup>3</sup>

On the following day, May 24, the District Court ordered that Logue be transferred to a federal medical facility pursuant to 18 U. S. C. § 4244 (1970). While awaiting the processing of papers and other steps preparatory to the actual transfer, however, federal officials made arrangements to transfer Logue back to the Nueces County jail.<sup>4</sup> Before the transfer, Bowers informed the chief jailer of Logue's suicidal tendencies and requested that he prepare for Logue a special cell removed of all dangerous objects that might be used in another suicide attempt. Such a cell was prepared by the jail authorities, and Logue was placed in it. Bowers made no specific arrangements for constant surveillance of Logue once he was confined, and the jail employees made only periodic checks when they were on that floor for some other reason. The day after his return to the jail, Logue removed the Kerlix bandage that had been applied to the laceration on his left arm and hanged himself.

<sup>3</sup> There was testimony that Logue had twice before made suicide attempts.

<sup>4</sup> There was testimony at trial that it normally takes about a week or two after a commitment order has been entered before a prisoner can be physically transferred to a mental institution. There was also testimony that this process can be expedited to obtain commitment as early as 24 hours after an order has been signed.



The District Court found that there had been a contract between the Government and Nueces County whereby the latter undertook to house federal prisoners in the county jail at Corpus Christi. That court nonetheless found that the United States was liable for the negligence of the employees of the Nueces County sheriff as well as for the negligence of its own employee. The court found the former to have been negligent because their surveillance of Logue was "inadequate," and it found Bowers to have been negligent in failing to make "specific arrangements . . . for constant surveillance of the prisoner."

The Court of Appeals reversed the judgment of the District Court, stating in its opinion that:

"We interpret [18 U. S. C. § 4002 (1970)] as fixing the status of the Nueces County jail as that of a 'contractor.' Title 18 U. S. C. Sec. 2671. . . . This insulates the United States from liability under the FTCA for the negligent acts or omissions of the jail's employees. We find no support in the record for holding that Deputy Marshal Bowers had any power or authority to control any of the internal functions of the Nueces County jail. The deputy marshal, accordingly, violated no duty of safekeeping with respect to the deceased." 459 F. 2d, at 411.

The Federal Tort Claims Act makes the United States liable for money damages "caused by the negligent or wrongful act or omission of any employee of the Government . . . ." 28 U. S. C. § 1346 (b) (1970). Section 2671 of Title 28, United States Code, contains the following definitions:

"As used in this chapter and sections 1346 (b) and 2401 (b) of this title, the term 'Federal agency'

includes the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"'Employee of the government' includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation."

For the Government to be liable for the negligence of an employee of the Nueces County jail, he must be shown to be an "employee of the Government" as that term is used in the Federal Tort Claims Act. Though petitioners do not always distinguish between their two theories, they appear to contend alternatively that the Nueces County jail is a "Federal agency" by reason of its contract for the care of federal prisoners, or that the employees of the jail are "acting on behalf of" the Bureau of Prisons or the Government in performing services for federal prisoners. The Court of Appeals rejected these contentions, and we believe that it was right in doing so.

We read that portion of the Court of Appeals' opinion quoted *ante* as treating the "contractor" exemption from the definition of "Federal agency" in § 2671 as adopting the common law distinction between the liability of an employer for the negligent acts of his own employees and his liability for the employees of a party with whom he contracts for a specified performance. Both the modern common law as reflected in the Restatement of

Agency<sup>5</sup> and the law of Texas<sup>6</sup> make the distinction between the servant or agent relationship and that of independent contractor turn on the absence of authority in the principal to control the physical conduct of the contractor in performance of the contract.

In *Maryland v. United States*, 381 U. S. 41 (1965), one of the factors relied upon by the Court in determining that both military and civilian National Guard personnel were employees of the States, rather than of the United States, for purposes of the Federal Tort Claims Act, was the "supervision exercised by the States over both military and civilian personnel," 381 U. S., at 53. The Courts of Appeals that have had occasion to decide the question appear to have unvaryingly held that the "contractor with the United States" language of § 2671 adopts the traditional distinction between employees of the principal and employees of an independent contractor with the principal, and to have also held that the critical factor in making this determination is the authority of the principal to control the detailed physical performance of the contractor. See, e. g., *Gowdy v. United States*, 412 F. 2d 525, 534 (CA6 1969); *Eutsler v. United States*,

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<sup>5</sup> ALI, Restatement (Second) Agency, § 2 (1958):

"(1) A master is a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.

"(2) A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.

"(3) An independent contractor is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. He may or may not be an agent."

<sup>6</sup> E. g., *Great Western Drilling Co. v. Simmons*, 157 Tex. 268, 302 S. W. 2d 400 (1957).

376 F. 2d 634 (CA10 1967); *Yates v. United States*, 365 F. 2d 663 (CA4 1966); *Kirk v. United States*, 270 F. 2d 110 (CA9 1959).

Petitioners cite the commentary to the Restatement of Torts, § 409 (1965), to the effect that the common law distinction that shields the employer from liability for injuries caused to another by the negligent act of a contractor or his servant is subject to so many exceptions that it is the general rule "only in the sense that it is applied where no good reason is found for departing from it." Congress, of course, could have left the determination as to whose negligence the Government should be liable for under the Federal Tort Claims Act to the law of the State involved, as it did with other aspects of liability under the Act. But it chose not to do this, and instead incorporated into the definition of the Act the exemption from liability for injury caused by employees of a contractor. While this congressional choice leaves the courts free to look to the law of torts and agency to define "contractor," it does not leave them free to abrogate the exemption that the Act provides.

Petitioners suggest that because 18 U. S. C. § 4042 imposes a duty on the Bureau of Prisons to "provide for the safekeeping, care, and subsistence of all persons charged with . . . offenses against the United States . . ." the Nueces County employees who were discharging the Government's obligation by contract should be held to be employees of the Government for purposes of liability under the Act.<sup>7</sup> This Court held in *United States v. Muniz*, 374 U. S. 150 (1963), that a breach of the duty imposed on the Government by 18 U. S. C. § 4042 was actionable under the Act. But the same public law that imposed this duty on the Government also author-

<sup>7</sup> This argument is also put in terms of a "non-delegable duty" owed by the Government to a prisoner under 18 U. S. C. § 4042 (1970).

ized the Government to contract with state and local authorities to provide safekeeping and care:

"For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Director of the Bureau of Prisons may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

"The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence *and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.*"

18 U. S. C. § 4002 (1970) (emphasis added).

Thus Congress not only authorized the Government to make contracts such as the one here in question, but rather clearly contemplated that the day-to-day operations of the contractor's facilities were to be in the hands of the contractor, with the Government's role limited to the payment of sufficiently high rates to induce the contractor to do a good job. The contract entered into between the Government and Nueces County reflects a similar division of responsibility. The county undertakes to provide custody in accordance with the Bureau of Prisons' "rules and regulations governing the care and custody of persons committed" under the contract. These rules in turn specify standards of treatment for federal prisoners, including methods of discipline, rules for communicating with attorneys, visitation privileges, mail, medical services, and employment. But the agree-

ment gives the United States no authority to physically supervise the conduct of the jail's employees; it reserves to the United States only "the right to enter the institution . . . at reasonable hours for the purpose of inspecting the same and determining the conditions under which federal offenders are housed."

The Court of Appeals' conclusion that the deputy marshal had no authority to control the activities of the sheriff's employees is supported by both the enabling statute and the contract actually executed between the parties. We agree with its resultant holding that the sheriff's employees were employees of a "contractor with the United States," and not, therefore, employees of a "Federal agency."

The judges of the Court of Appeals who dissented from the denial of rehearing *en banc* pointed out that petitioners alternatively contended in that court, as they do here, that even though the sheriffs' employees might not be "employees" of a federal agency, they might nonetheless be "acting on behalf of a Federal agency in an official capacity . . ." 463 F. 2d, at 1342. If petitioners were successful in establishing this contention, of course, an employee of the Nueces County jail would be an "employee of the government" under § 2671 even though he was not an "employee" of a federal agency.

The legislative history to which we are referred by the parties sheds virtually no light on the congressional purpose in enacting the "acting on behalf of" language of § 2671. The long gestation period of the Act in the committees of Congress has been recounted in *Dalehite v. United States*, 346 U. S. 15, 24-30 (1953), and this lengthy period may have something to do with the paucity of helpful committee reports on this point. One of the more immediate antecedents of the bill that Congress enacted contained identical "acting on behalf of" language: ". . . and persons acting on behalf of

a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation." H. R. 5373, 77th Cong., 2d Sess., § 101 (1942), quoted in Hearings on H. R. 5373 and H. R. 6343 before the House Committee of the Judiciary, 77th Cong., 2d Sess., 1 (1942). One of the appendices to the hearings on these bills compares the provisions of H. R. 6343, containing the "acting on behalf of" language, with previous drafts, and states that "'Employee of the Government' in the present bill is defined to include uncompensated or temporary officers or employees of the United States." Hearings, *supra*, at 58. The committee's observation thus affords some support to the Government's contention that the language is designed to cover special situations such as the "dollar-a-year" man who is in the service of the Government without pay, or an employee of another employer who is placed under direct supervision of a federal agency pursuant to contract or other arrangement.

The dissenting judges in the Court of Appeals expressed the view that "when the Government decides that a particular individual should assume obligations and responsibilities virtually identical to those of a salaried federal employee, there may very well be some persuasive basis for the suggestion that such an individual's breach of a specific statutory duty owed by the salaried employee to a specific class of persons should visit identical liability upon the United States." 463 F. 2d, at 1342-1343. But we are not persuaded that employees of a contractor with the Government, whose physical performance is not subject to governmental supervision, are to be treated as "acting on behalf of" a federal agency simply because they are performing tasks that would otherwise be performed by salaried employees of the Government. If this were to be the law, the exclusion of contractors from the definition of "Federal agency" in § 2671



would be virtually meaningless, since it would be a rare situation indeed in which an independent contractor with the Government would be performing tasks that would not otherwise be performed by salaried Government employees.<sup>8</sup>

While we therefore agree with the conclusion of the Court of Appeals that the Government was not liable for the negligence of the employees of Nueces County, we disagree with its implicit determination that such a conclusion ends the case. For the District Court imposed liability on the Government not only for the negligent acts of employees of the Nueces County sheriff, but also for negligent acts of Deputy Marshal Bowers, who was concededly an employee of the Government. The District Court found that Bowers, knowing of the prisoner's suicidal tendencies, should have made "specific arrangements . . . for constant surveillance of the prisoner," and that his failure to do so was negligence. The Court of Appeals in that portion of its opinion quoted *ante*, —, stated that "[t]he deputy marshal, accordingly, violated no duty of safekeeping with respect to the deceased." 459 F. 2d, at 411. But that conclusion appears to us to follow from the court's discussion of the nature of the intergovernmental relationship and the

<sup>8</sup> The two Courts of Appeals' cases relied upon by petitioners involved findings of control by the Government that are contrary to the determination of the Court of Appeals in this case. In *Close v. United States*, — U. S. App. D. C. —, 397 F. 2d 686 (1968), the court reversed a summary judgment in favor of the Government, observing that there was no reason to assume that the Attorney General was without power to supervise the District of Columbia's jailer. The court expressly noted that no contention was made that the District of Columbia jail was a "contract" jail. *Id.*, at 687. In *Witt v. United States*, 462 F. 2d 1261 (CA2 1972), the court held that the supervising employee "was certainly amenable to some degree of control by the Disciplinary Barracks," *id.*, at 1264, and that he was therefore "acting on behalf of" the Government.



status of the sheriff's employees, rather than being a separate rejection of the finding of the District Court that Bowers himself was negligent. Since the Court of Appeals thus did not consider the distinct question regarding the negligence of Bowers, we believe that the parties' arguments on that question should be addressed in the first instance to the Court of Appeals.

We therefore vacate the judgment of the Court of Appeals and remand the case for consideration of the liability of the Government insofar as that liability may be based on the negligence of Deputy Marshal Bowers.

*It is so ordered.*

MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join the opinion of the Court upon the understanding that, upon remand, the Court of Appeals' consideration of Bowers' negligence will not be limited to his alleged failure to make "specific arrangements . . . for constant surveillance of the prisoner."